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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150629562-6025-01]

RIN 0648-BF25

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Management in the Bering Sea Pollock Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 110 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 110 and this proposed rule would improve the management of Chinook and chum salmon bycatch in the Bering Sea pollock fishery by creating a comprehensive salmon bycatch avoidance program. This action is necessary to minimize Chinook and chum salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maintaining the potential for the full harvest of the pollock total allowable catch within specified prohibited species catch limits. Amendment 110 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Comments must be received no later than *[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0081 of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0081, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 110 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action (collectively the “Analysis”) may be obtained from www.regulations.gov.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to

NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by e-mail to *OIRA_Submission@omb.eop.gov* or by fax to 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington or Alicia Miller, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This proposed rule would implement Amendment 110 to the FMP. The Council has submitted Amendment 110 for review by the Secretary of Commerce, and a Notice of Availability (NOA) of this amendment was published in the **Federal Register** on January 8, 2016, with comments invited through March 8, 2015 (81 FR 897). Respondents do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 110 and addressed in the response to comments in the final decision.

The following sections describe the fisheries and the current management programs that would be affected by Amendment 110 and this proposed rule: 1) the

Bering Sea pollock fishery, 2) salmon bycatch in the Bering Sea pollock fishery, 3) importance of salmon in western Alaska, 4) management of salmon bycatch in the Bering Sea and Aleutian Islands, 5) objectives of and rationale for Amendment 110 and this proposed rule, 6) proposed salmon bycatch management measures, 7) proposed changes to monitoring and enforcement requirements, and 8) other regulatory changes in the proposed rule.

The Bering Sea Pollock Fishery

Amendment 110 and this proposed rule would apply to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota (CDQ) Program groups participating in the pollock (*Gadus chalcogrammus*) fishery in the Bering Sea subarea of the BSAI.

Currently, pollock in the BSAI is managed in three separate geographic units: the Bering Sea subarea, the Aleutian Islands subarea, and the Bogoslof District of the Bering Sea subarea. Amendment 110 and this proposed rule only apply to management of the pollock fishery in the Bering Sea subarea. Amendment 110 would not affect the management of pollock fisheries in the Aleutian Islands or the status of pollock fishing in the Bogoslof District. Therefore, in this proposed rule, the term “pollock fishery” refers only to the Bering Sea pollock fishery, unless otherwise specified.

The pollock fishery is the largest single species fishery, by volume, in the United States. The wholesale gross value of this fishery was more than 1.329 billion dollars in 2013, the most recent year of complete wholesale value data. The pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note). In October 1998, Congress enacted the AFA, which “rationalized” the pollock fishery by identifying

the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. For more information on the AFA, please see the final rule implementing the AFA (67 FR 79692, December 30, 2002).

Under the AFA, 10 percent of the pollock total allowable catch (TAC) is allocated to the CDQ Program. After the CDQ Program allocation is subtracted, an amount needed for the incidental catch of pollock in other non-pollock groundfish fisheries is subtracted from the TAC. In 2015, the pollock TAC was 1,310,000 metric tons (mt). In 2015, the CDQ allocation was 131,000 mt of pollock and the incidental catch allowance was 47,160 mt. The “directed fishing allowance” is the remaining amount of pollock, after subtraction of the CDQ Program allocation and the incidental catch allowance. The directed fishing allowance is then allocated among the AFA inshore sector (50 percent), the AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). Annually, NMFS further apportions the pollock allocations to the CDQ Program and the AFA sectors between two seasons—40 percent to the A season (January 20 to June 10) and 60 percent to the B season (June 10 to November 1) (see § 679.20(a)(5)(i)(B)(1)).

The allocation of pollock to the CDQ sector is further allocated among the six non-profit corporations (CDQ groups) that represent the 65 communities eligible for the CDQ Program under section 305(i)(1)(D) of the Magnuson-Stevens Act. The current percentage allocations of pollock among the six CDQ groups were approved by NMFS in 2005 based on recommendations from the State of Alaska (State). These percentage allocations are now the required allocations of pollock among the CDQ groups under section 305(i)(1)(B) of the Magnuson-Stevens Act. More information about the

allocations of pollock, other groundfish, crab, and prohibited species (including Chinook salmon) among the six CDQ groups is provided in the **Federal Register** notice that described the effect of the 2006 amendments to the Magnuson-Stevens Act on CDQ Program allocations (71 FR 51804, August 31, 2006).

CDQ groups typically sell or lease their pollock allocations to harvesting partners, including vessels owned, in part, by the CDQ group. Although CDQ groups are not required to partner with AFA-permitted vessels to harvest CDQ pollock, to date, the vessels harvesting CDQ pollock have also been AFA-permitted vessels. Specifically, the CDQ pollock allocations have most often been harvested by AFA catcher/processors, and to a lesser extent, AFA catcher vessels delivering to a mothership. A relatively small amount of CDQ pollock has been harvested by AFA catcher vessels delivering to inshore processing plants.

The AFA allows for the formation of fishery cooperatives within the non-CDQ sectors. A purpose of these AFA cooperatives is to further subdivide each sector's or inshore cooperative's pollock allocation among participants in the sector or cooperative through private contractual agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed upon share. The cooperatives also facilitate transfers of pollock among the cooperative members, enforce contract provisions, and participate in an intercooperative agreement to minimize non-Chinook salmon bycatch and an incentive plan agreement to minimize Chinook salmon bycatch.

Each year, catcher vessels eligible to deliver pollock to the seven eligible AFA inshore processors may form inshore cooperatives associated with a particular inshore

processor. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation. The amount of pollock allocated to each inshore cooperative is based on the member vessel's pollock catch history from 1995 through 1997, as required under section 210(b) of the AFA (16 U.S.C. 1851 note). These catcher vessels are not required to join an inshore cooperative. Those that do not join an inshore cooperative are managed by NMFS under the "inshore open access fishery." For 2015, seven inshore cooperatives have been formed by AFA eligible inshore catcher vessels and their partner inshore processors.

The AFA catcher/processor sector is made up of the catcher/processors and catcher vessels eligible under the AFA to deliver to catcher/processors. Owners of the catcher/processors that are listed by name in the AFA and are still active in the pollock fishery have formed a cooperative called the Pollock Conservation Cooperative (PCC). Owners of the catcher vessels eligible to deliver pollock to the catcher/processors have formed a cooperative called the High Seas Catcher's Cooperative (HSCC). Collectively, the AFA catcher/processor sector operates as a single entity and coordinates the harvesting of its pollock allocation. All participants that harvest pollock allocated to the catcher/processor sector are members of the two cooperatives, except for one participant. Section 208(e)(21) of the AFA expressly limits the amount of harvest by the one participant in the catcher/processor sector who is not a member of a cooperative to 0.5 percent of the TAC allocated to the catcher/processor sector.

The AFA mothership sector is made up of three motherships named in the AFA that are eligible to receive and process pollock harvested by catcher vessels, and the

catcher vessels eligible under the AFA to deliver pollock to these motherships. All catcher vessels delivering to these three motherships have formed a cooperative called the Mothership Fleet Cooperative (MFC). The primary purpose of the cooperative is to sub-allocate the mothership sector pollock allocation among the catcher vessels authorized to harvest this pollock and to manage these allocations.

The cooperatives control the harvest by their member vessels so that the pollock allocation to the sector is not exceeded. However, NMFS monitors pollock harvest by all members of the catcher/processor sector and mothership sector. NMFS retains the authority to close directed fishing for pollock by a sector if vessels in that sector continue to fish once the sector's seasonal allocation of pollock has been harvested.

Salmon Bycatch in the Bering Sea Pollock Fishery

Pollock is harvested with fishing vessels using trawl gear, which are large nets towed through the water by the vessel. Pollock can occur in the same locations as Chinook salmon and chum salmon. Consequently, Chinook salmon and chum salmon are incidentally caught in the nets as fishermen target pollock.

Section 3 of the Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery, which are not sold or kept for personal use. Therefore, Chinook salmon and chum salmon caught in the pollock fishery are considered bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. Bycatch of any species, including discard or other mortality caused by fishing, is a concern of the Council and NMFS. National Standard 9 and section 303(a)(11) of the Magnuson-Stevens Act require the Council to select, and NMFS to implement, conservation and

management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

The bycatch of culturally and economically valuable species like Chinook salmon and chum salmon, which are fully allocated and, in some cases, facing conservation concerns, are categorized as prohibited species under the FMP. They are the most regulated and closely managed category of bycatch in the groundfish fisheries off Alaska, and specifically in the BS pollock fishery. In addition to Pacific salmon, other species including steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring are classified as prohibited species in the groundfish fisheries off Alaska. As a prohibited species, fishermen must avoid salmon bycatch and any salmon caught must either be donated to the Prohibited Species Donation (PSD) Program (see regulations at § 679.26), or returned to Federal waters as soon as is practicable, with a minimum of injury, after an observer has determined the number of salmon and collected any scientific data or biological samples.

The PSD Program was established to reduce the amount of edible protein discarded under prohibited species catch (PSC) regulatory requirements (see regulations § 679.21). One reason for requiring the discard of prohibited species is that some of the fish may live if they are returned to the sea with a minimum of injury and delay. However, salmon caught incidentally in trawl nets die as a result of that capture due to damage they suffer within the nets. The PSD Program allows permitted seafood processors to retain salmon bycatch for distribution to economically disadvantaged individuals through tax-exempt hunger relief organizations. Section 4.5.6 of the Analysis

provides additional detail on the PSD Program and donations received and processed through that program.

Chinook Salmon Bycatch

The pollock fishery catches more than 95 percent of the Chinook salmon taken incidentally in the BSAI groundfish fisheries, based on data from 1992 through 2014. However, the amount of Chinook salmon bycatch taken by the pollock fishery has declined since 2007. From 1992 through 2001 the average Chinook salmon bycatch in the pollock fishery was 32,482 fish per year. Bycatch increased substantially from 2002 through 2007, to an average of 74,067 Chinook salmon per year. A historic high of approximately 122,000 Chinook salmon was taken in the pollock fishery in 2007. However, since 2007 Chinook salmon bycatch declined substantially to an average of 15,500 Chinook salmon per year from 2008 to 2014. The decline is most likely due to a combination of factors, including changes in abundance and distribution of Chinook salmon and pollock, as well as changes in fleet behavior to avoid salmon bycatch.

In years of historically high Chinook salmon bycatch in the pollock fishery (2002 through 2007), the rate of Chinook salmon bycatch averaged 52 Chinook salmon per 1,000 tons of pollock harvested. With so few salmon relative to the large amount of pollock harvested, Chinook salmon encounters are difficult to predict or avoid. Vessel-level cooperation to share information about areas of high Chinook salmon encounter rates probably is the best tool that the industry currently has to quickly identify areas of high bycatch and to avoid fishing there. However, it will continue to be difficult to predict when and where large amounts of Chinook salmon bycatch will be encountered by the pollock fleet, primarily because of the current lack of understanding of the

biological and oceanographic conditions that influence the distribution and abundance of salmon in the areas where the pollock fishery occurs.

Chinook salmon taken in the pollock fishery originate from river systems in Alaska, the Pacific Northwest, and Canada. Estimates vary from year to year, but on average approximately 65 percent of the Chinook salmon bycatch in the pollock fishery may be destined for western Alaska. Western Alaska includes the Bristol Bay, Kuskokwim, Yukon, and Norton Sound areas. Chinook salmon destined for elsewhere in Alaska, the Pacific Northwest, and Canada comprise approximately 28 percent of the bycatch. Section 3.4 of the Analysis provides additional information about Chinook salmon biology, distribution, and stock assessments by river system or region (see **ADDRESSES**).

Chum Salmon Bycatch

The pollock fishery catches over 95 percent of the chum salmon taken incidentally as bycatch in the BSAI groundfish fisheries. The pollock fishery catches chum salmon almost exclusively in the B season (after June 10). The pollock fishery has caught large numbers of chum, with a historic high of approximately 700,000 chum salmon taken in 2005. Since then, bycatch levels in the pollock fishery have been quite variable, ranging from a low of 13,280 chum salmon in 2010 to a high of 309,646 chum salmon in 2006. Average chum salmon bycatch from 2006 through to 2014 was 115,190 chum salmon. In 2014, the pollock fishery caught 219,428 chum salmon.

Genetic information indicates that the majority of the chum salmon caught in the pollock fishery are of Asian origin (approximately 60 percent) while a smaller percentage (approximately 21 percent) originate from aggregate streams in western Alaska. Chum

salmon from elsewhere in Alaska, the Pacific Northwest, and Canada comprise the remaining percentage of the bycatch (approximately 19 percent). While the genetics cannot differentiate hatchery-origin fish from wild Asian chum salmon, given the high proportion of Pacific Rim hatchery-released chum from Japan, much of the Asian origin chum observed in the bycatch is likely to be of Asian hatchery-origin. Alaska chum salmon runs have indicated a history of volatility in run sizes, and chum salmon stocks in Alaska are generally at higher levels of abundance than historical periods. Section 3.4 of the Analysis provides additional information about chum salmon biology, distribution, and stock assessments by river system or region (see **ADDRESSES**).

Importance of Salmon in Western Alaska

The Council and NMFS have been concerned about the potential impact of Chinook and chum salmon bycatch on returns to western Alaska given the relatively large proportion of bycatch from these river systems that occurs in the pollock fishery. Chinook salmon and chum salmon destined for western Alaska support commercial, subsistence, sport, and personal use fisheries. The Alaska Board of Fisheries adopts regulations through a public process to conserve salmon and to allocate salmon to the various users. The State of Alaska Department of Fish and Game manages the salmon commercial, subsistence, sport, and personal use fisheries. The first management priority is to meet spawning escapement goals to sustain salmon resources for future generations. The next priority is for subsistence use under both State and Federal law. Salmon is a primary subsistence food in some areas. Subsistence fisheries management includes coordination with U.S. Federal agencies where Federal rules apply under the Alaska National Interest Lands Conservation Act. Section 3.4 of the Analysis provides a

detailed description of the State and Federal management process. Appendix A-4 of the Analysis provides an overview of the importance of subsistence salmon harvests and commercial salmon harvests.

Management of Salmon Bycatch in the Bering Sea and Aleutian Islands (BSAI)

Over the last 20 years, the Council and NMFS have adopted and implemented several management measures to limit salmon bycatch in the BSAI trawl fisheries, and particularly in the pollock fishery. Management measures have focused on minimizing Chinook salmon bycatch, chum salmon bycatch, and non-Chinook salmon bycatch. Non-Chinook bycatch is a category that includes all salmon species except Chinook salmon, but is comprised predominantly of chum salmon.

In 1994, the Chum Salmon Savings Area in the eastern Bering Sea was established by an emergency rule (59 FR 35476, July 12, 1994). This Chum Salmon Savings Area corresponded to a region of historically high chum salmon bycatch compared to other areas in the Bering Sea. The Council subsequently recommended maintaining the Chum Salmon Savings Area under Amendment 35 to the FMP (60 FR 34904, July 5, 1995). Amendment 35 closed the Chum Salmon Savings Area to all trawling from August 1 through August 31 and established a 42,000 non-Chinook salmon PSC limit for trawl vessels operating in the Bering Sea. A PSC limit is effectively a bycatch limit; it constrains fishing once the amount of PSC is reached. Amendment 35 also established a separate Catcher Vessel Operational Area. The Catcher Vessel Operational Area corresponds to another region in the eastern Bering Sea where trawl catcher vessels had historically been observed to have high non-Chinook salmon (i.e., chum salmon) bycatch. Under Amendment 35, if the non-Chinook salmon PSC limit was

caught in the Catcher Vessel Operational Area between August 15 and October 14, NMFS prohibited fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area. Figure 9 to part 679 shows the Chum Salmon Savings Area and Catcher Vessel Operational Area.

In 1995, NMFS also established the Chinook Salmon Savings Area, which was implemented under Amendment 21b to the FMP (60 FR 61215, November 29, 1995). The Chinook Salmon Savings Area was established based on historic information regarding the location and timing of Chinook salmon bycatch. Regulations implementing Amendment 21b established annual PSC limits for Chinook salmon and specific seasonal no-trawling zones in the Chinook Salmon Savings Area that would close when the limits were reached. Once the 48,000 Chinook salmon PSC limit was reached, these regulations prohibited trawling in the Chinook Salmon Savings Area through April 15.

In 2000, NMFS implemented Amendment 58 to the FMP, which reduced the Chinook Salmon Savings Area PSC limit from 42,000 to 29,000 Chinook salmon, redefined the Chinook Salmon Savings Area as two non-contiguous areas (Area 1 in the Aleutian Islands subarea and Area 2 in the Bering Sea subarea), and established new closure periods (65 FR 60587, October 12, 2000).

In 2005, NMFS implemented Amendment 82 to the FMP. Amendment 82 established the Aleutian Islands Chinook salmon PSC limit of 700 fish. If the limit is reached, NMFS will close the directed pollock fishery in the Aleutian Islands Chinook Salmon Savings Area (70 FR 9856, March 1, 2005).

In 2007, NMFS implemented Amendment 84 to the FMP to enhance the effectiveness of salmon bycatch measures. The Council and NMFS were concerned that

increases in Chinook salmon and non-Chinook (predominantly chum) salmon bycatch in the pollock fishery were occurring despite Chinook and chum salmon PSC limits being reached and the closures of the Chinook Salmon Savings Area and Chum Salmon Savings Area (72 FR 61070, October 29, 2007). Amendment 84 exempted pollock vessels from Chinook Salmon Savings Area and Chum Salmon Savings Area closures if they participate in an intercooperative agreement (ICA) to reduce salmon bycatch. Amendment 84 also exempted vessels participating in non-pollock trawl fisheries from Chum Salmon Savings Area closures because these fisheries intercept minimal amounts of salmon. In 2010, NMFS implemented Amendment 91 to the FMP to manage Chinook salmon bycatch in the pollock fishery (75 FR 53026, August 30, 2010), and to remove Chinook salmon from the Amendment 84 regulations. However, Amendment 84 continues to apply to non-Chinook salmon bycatch.

The ICA allowed vessels participating in the pollock fishery to use their internal cooperative structure to reduce Chinook salmon and non-Chinook salmon bycatch using a method called the voluntary rolling hotspot system. Amendment 84 required that parties to the ICA include the AFA cooperatives; the six CDQ groups; at least one third-party group, including any organizations representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction but do not directly fish in a groundfish fishery; and at least one entity retained to facilitate bycatch avoidance behavior and information sharing. All AFA cooperatives and CDQ groups participated in the ICA and continue to do so to avoid incidentally catching non-Chinook salmon.

Amendment 84 continues to exempt vessels participating in the ICA from the Chum Salmon Savings Area closure. Closure of the Chum Salmon Savings Area was

designed to reduce the total amount of chum salmon bycatch by closing areas with historically high levels of chum salmon bycatch. The ICA operates in lieu of a fixed area closure, and is required to identify and close areas of high salmon bycatch and move vessels to other areas.

Fishery participants provide the ICA with real-time salmon bycatch information and the ICA uses that information to inform other fishery participants to avoid areas of high non-Chinook salmon bycatch rates. Using a system specified in regulations, the ICA assigns vessels in a cooperative to certain tiers, based on bycatch rates of vessels in that cooperative relative to a base rate established in regulations, and implements large area closures for vessels in tiers associated with higher bycatch rates. The ICA managers monitor salmon bycatch in the pollock fisheries and announce area closures for areas with relatively high salmon bycatch rates. Monitoring and enforcement are accomplished through private contractual arrangements. The efficacy of voluntary closures and bycatch reduction measures are reported to the Council annually.

Amendment 91, as implemented in 2010 to manage Chinook salmon bycatch in the pollock fishery (75 FR 53026, August 30, 2010), combined a limit on the amount of Chinook salmon that may be caught incidentally with a novel approach designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years, while providing the fleet the flexibility to harvest the pollock TAC. Amendment 91 removed Chinook salmon from the Amendment 84 regulations, and established two Chinook salmon PSC limits for the pollock fishery—60,000 and 47,591 Chinook salmon. Under Amendment 91, the PSC limit is 60,000 Chinook salmon if some, or all, of the pollock fishery participates in an industry-developed contractual

arrangement, called an incentive plan agreement (IPA). An IPA establishes an incentive program to minimize bycatch at all levels of Chinook salmon abundance. Participation in an IPA is voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA is subject to a restrictive opt-out allocation (also called a backstop cap). Since Amendment 91 was implemented, all AFA vessels have participated in an IPA.

To ensure participants develop effective IPAs, participants provide the Council and NMFS an annual report that describes the efforts each IPA is taking to accomplish the intent of the program that each vessel actively avoids Chinook salmon at all times while fishing for pollock and, collectively, that bycatch is minimized in each year. The IPA system is designed to be flexible, responsive, and can be tailored by each sector to fit its operational needs. The IPAs impose rewards for avoiding Chinook salmon bycatch or penalties for failure to avoid Chinook salmon bycatch at the vessel level. While the IPAs provide an incentive to minimize bycatch in all years to a level below the limit, a limit of 60,000 Chinook salmon provides the industry the flexibility to harvest the pollock TAC in high-encounter years when bycatch is difficult to avoid.

Since implementation, all the participants in the pollock fishery are currently participating in IPA agreements. There are three NMFS-approved IPA agreements currently in place: the Inshore Chinook Salmon Savings Incentive Plan Agreement, the Mothership Salmon Savings Incentive Plan Agreement, and the Catcher Processor Chinook Salmon Bycatch Reduction Incentive Plan and Agreement. Section 2.1.2.3 of the Analysis provides details on the features of the current IPA agreements.

Under Amendment 91, if fishery participants do not form any IPAs, the 47,591 Chinook salmon PSC limit applies rather than the 60,000 Chinook salmon PSC limit.

This PSC limit was the approximate 10-year average of Chinook salmon bycatch from 1997 to 2006, the years considered by the Council and NMFS when developing Amendment 91. The 47,591 Chinook salmon PSC limit constrains Chinook salmon bycatch in the pollock fishery if no other incentives, namely the IPAs, are operating to minimize bycatch below this level.

Both the 60,000 and 47,591 Chinook salmon PSC limits are apportioned between the A and B seasons and allocated to the AFA catcher/processor sector, the AFA mothership sector, the AFA inshore sector, and CDQ Program. NMFS further allocates the AFA inshore sector PSC among the inshore cooperative and the CDQ Program PSC among the CDQ groups. Chinook salmon PSC allocations made to sectors, inshore cooperatives, and the CDQ groups are transferable. Transferability mitigates the variation in the salmon encounter rates among sectors, inshore cooperatives, and CDQ groups, in a given pollock season. It allows eligible participants to obtain a larger portion of the PSC allocation in order to harvest their pollock allocation or to transfer surplus PSC allocation to other entities. When a Chinook salmon PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group must stop fishing for pollock for the remainder of the season even if its pollock allocation has not been fully harvested.

Amendment 91 also established a performance standard as an additional tool to ensure that the IPA is effective and that the AFA sectors and the CDQ Program do not fully harvest their Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit in most years. For an AFA sector or the CDQ Program to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that AFA sector or the CDQ Program may not exceed its annual threshold amount in any three

years within seven consecutive years. If this performance standard is not met, that AFA sector or CDQ Program will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit. The risk of bearing the potential adverse economic impacts of a reduction from the 60,000 PSC limit to the 47,591 PSC limit creates incentives for fishery participants to cooperate in an effective IPA.

Before each fishing year, NMFS calculates each sector's annual threshold amount. If some, but not all, members of a sector were to participate in an IPA, NMFS would reduce that sector's annual threshold amount by an amount equal to the sum of each non-participating vessel's portion of the applicable performance standard. At the end of each fishing year, NMFS evaluates each sector's annual bycatch against that sector's annual threshold amount. Only the bycatch of vessels or CDQ groups participating in an IPA accrue against a sector's annual threshold amount. A sector's annual threshold amount does not change when vessels from other sectors or entire sectors opt out of an IPA or if another sector exceeds its performance standard.

Additional information the provisions of Amendment 91 are provided in the final rule prepared for that action (75 FR 53026, August 30, 2010).

Objectives of and Rationale for Amendment 110 and this Proposed Rule

In April 2015, the Council adopted Amendment 110. The objective of Amendment 110 and this proposed rule is to create a comprehensive salmon bycatch avoidance program that would work more effectively than the current salmon bycatch programs to avoid Chinook salmon bycatch and Alaska-origin chum salmon bycatch. The Council's action is designed to consider the importance of continued production of critical chum salmon runs in western Alaska by focusing on bycatch avoidance of

Alaskan chum salmon runs. These runs have a history of volatility in run sizes, and are of historic importance in the subsistence lifestyle of Alaskans. Additional protections to other chum stocks outside of Alaska are embedded in the Council's objective to avoid the high bycatch of chum salmon overall, recognizing that most non-Alaska chum salmon are likely from Asian hatcheries.

The Council recognized that the chum salmon bycatch reduction program under Amendment 84 does not meet the Council's objective for the pollock fishery to effectively avoid both Chinook salmon and chum salmon bycatch. Amendment 84 did not provide the flexibility necessary to avoid Chinook salmon when fishermen encountered both species, avoid Alaska chum salmon stocks, or to harvest pollock in times and places that best support those goals.

The Council recognized that Chinook salmon are an extremely important resource to Alaskans who depend on local fisheries for their sustenance and livelihood. Multiple years of historically low Chinook salmon abundance have resulted in significant restrictions for subsistence users in western Alaska and failure to achieve conservation objectives. The current Chinook salmon bycatch reduction program under Amendment 91 was designed to minimize bycatch to the extent practicable in all years, under all conditions of salmon and pollock abundance. While Chinook salmon bycatch impact rates have been low under the program, the Council determined that there is evidence that improvements could be made to ensure the program is reducing Chinook salmon bycatch at low levels of salmon abundance. An analysis of the possible improvements is provided in section 3.5.3 of the Analysis.

The Council considered a broad suite of measures to induce some level of behavior change to further avoid salmon bycatch, which is the primary objective of this action. Experience has shown that salmon avoidance requires flexibility and the ability of vessels to adjust to real-time information and fishery conditions. The Council also considered the trade-offs between the potential salmon saved and the forgone pollock catch.

In selecting the proposed salmon bycatch avoidance program, the Council considered five alternatives, with many options, to assess the impacts of minimizing Chinook salmon and chum salmon bycatch to the extent practicable while maintaining the potential for the full harvest of the pollock TAC. The Analysis contains a complete description of the alternatives and a comparative analysis of the potential impacts of the alternatives (see **ADDRESSES**).

The Council recommended all four action alternatives as Amendment 110. Amendment 110 would adjust the existing Chinook salmon bycatch program to incorporate revised chum salmon bycatch measures into the existing IPAs. In addition, the Council sought to provide greater incentives to avoid Chinook salmon by strengthening incentives during times of historically low Chinook salmon abundance in western Alaska. Thus, the management measures included in Amendment 110 focus on retaining the incentives to avoid Chinook salmon bycatch at all levels of abundance as intended by Amendment 91. The Council also expressed that it remains extremely important to provide the incentives to avoid Alaska-origin chum salmon while maintaining the flexibility to avoid Chinook salmon.

In developing Amendment 110, the Council and NMFS considered consistency with the Magnuson-Stevens Act's 10 National Standards and sought to balance the competing demands of the National Standards. Specifically, the Council and NMFS recognized the need to balance and be consistent with both National Standard 9 and National Standard 1. National Standard 9 requires that conservation and management measures minimize bycatch to the extent practicable. National Standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U. S. fishing industry. Amendment 110 meets National Standards 1 and 9, as well as the other eight National Standards. Amendment 110 also retains the structure and meets the original goals of Amendment 91, but makes improvements by providing greater incentives to minimize salmon bycatch in all conditions of abundance, while also providing a reasonable opportunity to harvest the full pollock TAC each year and to achieve the optimum yield for pollock over the long term.

The provisions of Amendment 110, and the rational for each provision, are described in the following section on the proposed salmon bycatch management measures.

Proposed Salmon Bycatch Management Measures

Amendment 110 and this proposed rule would—

- incorporate chum salmon avoidance into the IPAs established under Amendment 91 to the FMP, and remove the non-Chinook salmon bycatch reduction ICA previously established under Amendment 84 to the FMP;

- modify the requirements for the content of the IPAs to increase the incentives for fishermen to avoid Chinook salmon;
- change the seasonal apportionments of the pollock TAC to allow more pollock to be harvested earlier in the year;
- reduce the Chinook salmon PSC limit and performance standard in years with low Chinook salmon abundance in western Alaska; and
- improve the monitoring of salmon bycatch in the pollock fishery.

Incorporate Chum Salmon Avoidance into the Incentive Plan Agreements (IPAs)

Currently, Chinook salmon and chum salmon bycatch are managed under two different programs (Amendment 84 for chum salmon bycatch and Amendment 91 for Chinook salmon bycatch). This has created inefficiencies, as having separate programs does not allow participants in the pollock fishery the flexibility to modify harvest patterns and practices to effectively minimize both Chinook salmon and chum salmon bycatch. Adding chum salmon measures to the IPAs would increase flexibility in responding to changing conditions and provide greater incentives to reduce bycatch of both salmon species, thereby making salmon bycatch management more effective, comprehensive, and efficient. The chum salmon-specific requirements in the Amendment 84 implementing regulations sometimes prevent fishery participants from making decisions to avoid Chinook salmon when vessels encounter both chum salmon and Chinook salmon.

Amendment 110 and this proposed rule would incorporate chum salmon avoidance into the IPAs established under Amendment 91. This proposed rule would remove the Amendment 84 implementing regulations by removing § 679.21(g).

However, Amendment 110 and this proposed rule would maintain the current non-Chinook salmon PSC limit of 42,000 fish and the closure of the Chum Salmon Savings Area to the pollock fishery when the 42,000 non-Chinook salmon PSC limit has been reached (see the above section *Management of Salmon Bycatch in the Bering Sea and Aleutian Islands (BSAI)* for more detail on the existing salmon regulations). Vessels that participate in an IPA would be exempt from the Chum Salmon Savings Area closure. The purpose of maintaining the non-Chinook salmon PSC limit and the Chum Salmon Savings Area closure is to provide additional incentives for vessels to join an IPA, and to serve as back-stop chum salmon measures for those vessels that choose not to participate in an IPA.

Incorporating chum salmon into the IPAs meets the purpose of this action by providing measures to prevent high chum salmon bycatch, while also giving participants in the pollock fishery the flexibility to avoid Alaska chum stocks, and to use coordinated management under the IPAs to adapt quickly to changing conditions. The Council determined and NMFS agreed that this action for chum bycatch would strike an appropriate balance between regulatory requirements and adaptive management.

To incorporate chum salmon into the IPAs, the proposed rule would modify the required contents of the IPAs at § 679.21(f)(12), to include the following:

- The incentives for the operator of each vessel to avoid Chinook salmon and chum salmon bycatch under any condition of pollock and Chinook salmon abundance in all years.
- An explanation of how the incentives to avoid chum salmon do not increase Chinook salmon bycatch.

- The rewards for avoiding Chinook salmon, and the penalties for failure to avoid, Chinook salmon at the vessel level.
- An explanation of how the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon and chum salmon bycatch rates relative to what might have occurred in absence of the incentive program.
- An explanation of how the incentive measures in the IPA promote Chinook salmon savings and chum salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon and chum salmon.
- An explanation of how the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's Chinook salmon bycatch to keep total bycatch below the performance standard for the sector in which the vessel participates.
- An explanation of how the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska.
- The rolling hot spot program for salmon bycatch avoidance and the agreement to provide notifications of closure areas and any violations of the rolling hot spot program to at least one third party group representing western Alaskans who depend on salmon and do not directly fish in a groundfish fishery.

Amendment 110 and this proposed rule would maintain the important chum salmon avoidance features of the Amendment 84 ICAs. Amendment 110 and this

proposed rule would: 1) ensure that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska, 2) require the use of the rolling hot spot program for salmon bycatch avoidance, and 3) require notifications of closure areas and any violations of the rolling hot spot program to at least one third party group representing western Alaskans. Because Amendment 110 and this proposed rule would require a rolling hot spot program for both Chinook and chum salmon, the notification process would apply for both species. This proposed rule would also add reporting requirements to the IPA Annual Report in regulations at § 679.21(f)(13) to require the IPA representative to describe how the IPA addresses the goals and objectives in the IPA provisions related to chum salmon. Section 3.5.2 of the Analysis provides more detail on adding elements of chum salmon management.

Modify the IPAs to Increase the Incentives to Avoid Chinook Salmon

Amendment 110 and this proposed rule would modify the IPAs to increase the incentives for fishermen to avoid Chinook salmon. The Council and NMFS recognize that the IPAs were effective at providing incentives for each vessel to avoid Chinook salmon, but that additional measures were necessary to address higher Chinook salmon PSC rates observed in October (the last month when the pollock fishery is authorized to operate) and to address concerns with individual vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time. The Council and NMFS wanted to ensure the use of salmon excluder devices (i.e., gear modifications that are designed to exclude salmon bycatch while retaining pollock) and a rolling hotspot program. The proposed new provisions described below

are intended to provide an opportunity for IPAs to increase their responsiveness in October, and improve performance of individual vessels.

These new provisions would increase the incentives to reduce Chinook salmon bycatch within the IPAs. To incorporate additional incentives for Chinook salmon savings into the IPAs, the proposed rule would modify the required contents of the IPAs at § 679.21(f)(12) to include the following six provisions.

- Restrictions or penalties targeted at vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time.
- Requirement that vessels to enter a fishery-wide in-season salmon PSC data sharing agreement.
- Requirement for the use of salmon excluder devices, with recognition of contingencies, from January 20 through March 31 and from September 1 until the end of the B season.
- Requirement for a rolling hotspot program that operates throughout the entire A and B seasons.
- For savings-credit-based IPAs, limitation on the salmon savings credits to maximum of three years.
- Restrictions or performance criteria to ensure that Chinook salmon PSC rates in October are not significantly higher than those achieved in the preceding months, thereby avoiding late-season spikes in salmon PSC.

Restrictions or penalties targeted at vessels that consistently have significantly higher Chinook salmon PSC rates. To reduce the potential for a vessel to consistently

maintain higher rates of Chinook salmon PSC than other vessels fishing at the same time (i.e., an outlier), Amendment 110 and this proposed rule would incorporate additional restrictions or penalties targeted at individual vessels that consistently have significantly higher PSC rates as a way for IPAs to increase their responsiveness and improve an individual vessel's performance. Restrictions or penalties targeted at the outliers have the potential to induce changes in fishing behaviors. Strong incentives will induce vessel operators to change where they fish to avoid Chinook salmon bycatch. Changes in fishing patterns can involve several different behaviors: avoiding an area that has historically or recently had high bycatch; using and sharing more information on high-bycatch areas; and moving immediately once high bycatch has been observed. Section 3.5.3.1 of the Analysis provides more detail on this addition to the IPA requirements.

Require vessels to enter a fishery-wide in-season salmon PSC data sharing agreement. Information sharing is a core component of the IPA agreements for all sectors. While unlikely, communication about salmon bycatch could be withheld or distorted with the new incentives that would reward or punish vessels based on their relative performance. In order to reduce this possibility, Amendment 110 and this proposed rule would require the IPAs to require sharing information on PSC. PSC data is not confidential. Section 3.5.3.1 of the Analysis provides more detail on this addition to the IPA requirements.

Require use of a salmon excluder device. Salmon excluder devices are modifications to trawl gear that allow salmon to escape the trawl net while the net is in the water. The majority of pollock fishermen in the Bering Sea regularly use salmon excluder devices as part of the steps taken by the fishery to reduce its salmon bycatch.

Amendment 110 and this proposed rule would require that IPAs require all vessels to use a salmon excluder device from January 20 through March 31, and from September 1 until the end of the B season. This is the time when there is a potential for pollock fishermen to encounter Chinook salmon bycatch. Salmon excluder devices would not be required in the few remaining months of the pollock season when Chinook salmon are not typically encountered.

The Council and NMFS also recognize that contingencies exist when vessels cannot use excluder devices. Trawl gear can have problems; therefore, salmon excluder devices would not be required during rare occasions such as when a net tears or a spare excluder device is not available. In order to allow for innovation that might lead to the development of better excluder devices, the requirement to use a salmon excluder device does not specify the type of design. Section 3.5.3.2 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Require a rolling hotspot program. A Chinook salmon rolling hotspot program is a component of the current IPAs, however, it is not a mandatory requirement. The catcher/processor IPA and the mothership IPA have a rolling hotspot program in place throughout the year. The inshore IPA has a rolling hotspot program that can be suspended during the season. This provision would require all IPAs to have a rolling hot spot program that operates throughout the entire A and B seasons. This provision would also require notifications of closure areas and any violations of the rolling hot spot program to at least one third party group representing western Alaskans, consistent with the requirement for the chum salmon rolling hotspot program. This notification provision, which is an important feature of the current Amendment 84 ICAs, would not

entail the release of any confidential data. Section 3.5.3.3 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Limit the use of salmon savings credits to a maximum of three years. The inshore IPA and mothership IPA allow vessels to earn credits by avoiding salmon in one year, which they can use in the future to fish above the vessel or mothership platform's share of the performance standard for a limited number of years. In no case can credits saved in the inshore IPA or mothership IPA allow that sector to exceed its annual allocation of Chinook salmon PSC. Savings credits can only be used by vessels within an IPA up to the overall allocation for the AFA mothership sector or inshore cooperative.

For IPAs based on savings credits, Amendment 110 and this proposed rule would limit the amount of time savings credits could be used to three years after the year that the savings credits are earned. The Council and NMFS reviewed the use of savings credits and concluded that limiting the duration of credits to three years would likely increase the incentive to earn credits and increase the incentive to reduce Chinook salmon PSC. Section 3.5.3.4 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Restrictions or performance criteria to prevent significantly higher Chinook salmon PSC rates in October. The purpose of this provision is for the IPAs to implement restrictions or criteria designed to ensure that vessels do not have "excessive" bycatch late in October. Chinook salmon bycatch rates are generally higher in October. This provision would strengthen incentives to fish early in the B season and provide greater flexibility to vessels to catch their pollock quota while ensuring vessels do not have excessively high Chinook salmon bycatch late in the season. Section 3.5.3.5 of the

Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Revise the Bering Sea pollock seasonal allocations

This proposed rule would change the pollock allocation between the A and B seasons at § 679.20(a)(5)(i)(B)(I). Five percent of the pollock allocation for the B season would be reallocated to the A season for new seasonal apportionments of 45 percent in the A season and 55 percent in the B season. The proposed rule maintains the rollover of any remaining pollock from the A season to the B season. The Council recognized that shifting a limited amount of pollock to the A season would relieve some fishing pressure in the B season and allow the fleet more flexibility to change fishing practices to avoid salmon bycatch while harvesting the pollock TAC. Additionally, because pollock is more valuable in the A season, this allocation change may increase the value of pollock and offset the costs associated with avoiding salmon bycatch.

Revising the season allocation would work in conjunction with the new IPA requirements to shift effort out of the late B season and provide fishery participants more flexibility to avoid Chinook salmon PSC in the late B season. Both the research on salmon migration patterns and Chinook salmon bycatch rates show the time at which there is the greatest overlap with Chinook salmon and pollock fishing. In general, more Chinook salmon are on the grounds in the early A season and the late B season, and less Chinook salmon on the grounds during the late A season and early B season. This provision is intended to shift pollock effort away from these high overlap periods and allow for more effort during the low overlap periods. With the existing rollover provision, this adjustment in the seasonal allocation of pollock does not mandate that

more pollock be harvested in the A season, but it does provide the flexibility for up to 5 percent more pollock to be harvested in times when salmon PSC is lower. Section 3.5.4 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Reduce the Chinook Salmon Performance Standard and PSC Limit in Years of Low Chinook Salmon Abundance in Western Alaska

Amendment 110 and this proposed rule would add a new lower Chinook salmon performance standard and PSC limit for the pollock fishery in years of low Chinook salmon abundance in western Alaska. The Council and NMFS determined that a lower performance standard and PSC limit would be appropriate at low levels of Chinook salmon abundance in western Alaska to accommodate the fact that most of the Chinook salmon bycatch comes from western Alaska. These provisions would work in conjunction with the proposed changes to the IPA requirements to ensure that Chinook salmon bycatch is avoided at all times, particularly at low abundance levels.

Each year, NMFS would determine whether Chinook salmon was at low abundance based on information provided by the State. By October 1 of each year, the State would provide an index of abundance based on the post-season in-river Chinook salmon run size for the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping. When this index is less than or equal to 250,000 Chinook salmon, the new lower performance standard and low PSC limit would apply.

The Council and State conducted an extensive analysis about the appropriate index to use to indicate a low Chinook salmon abundance year. Low Chinook salmon abundance years are years characterized by difficulty meeting escapement goals and in-

river salmon fisheries being severely restricted or fully closed. Section 2.6 of the Analysis evaluates various indices and shows that the 3-system index (Unalakleet, Upper Yukon, and Kuskokwim river systems) meets the objectives. These river systems provide a broad regional representation of stocks and signify very important river systems and subsistence fisheries in western Alaska. Subsistence harvests from these three river systems account for up to 87 percent of the statewide subsistence harvest of Chinook salmon. As shown in the Analysis, having more than one system in the index and having broad regional representation makes the index more robust. The Analysis also shows a clear natural break in the data that index sizes less than 250,000 Chinook salmon correspond to years with historically low run sizes.

If NMFS determines it was a low Chinook salmon abundance year, NMFS would set the performance standard at 33,318 Chinook salmon and the PSC limit at 45,000 Chinook salmon for the following pollock fishing year. NMFS would publish the lower PSC limit and performance standard in the annual harvest specifications. In years when abundance is above 250,000 Chinook salmon, NMFS would manage under the current 47,591 Chinook salmon performance standard and 60,000 Chinook salmon PSC limit established under Amendment 91.

The performance standard of 33,318 Chinook salmon would function the same as the existing performance standard of 47,591 Chinook salmon under Amendment 91. The 33,318 performance standard would apply to each sector that has at least some members participating in an IPA. In each low Chinook salmon abundance year, NMFS would allocate the 33,318 performance standard as an “annual threshold amount” to the catcher/processor sector, the mothership sector, the inshore sector, and the CDQ

Program. The same seasonal and sector apportionments would apply to both performance standards. Although Chinook salmon PSC allocations are made to the inshore cooperatives and the CDQ groups, the performance standard applies to the sector, not to individual inshore cooperatives or CDQ groups. In addition to participation by at least some members in an IPA, for each sector to continue to receive its allocation of the 45,000 Chinook salmon PSC limit in low Chinook salmon abundance years, the total annual Chinook salmon bycatch by all members of a sector participating in an IPA could not exceed the sector's annual threshold amount (the sector's annual portion of the performance standard) in any three years within a consecutive seven-year period. The 33,318 performance standard would also be the PSC limit in low abundance years if no IPA was approved or for a sector that had exceeded its performance standard.

If there is an approved IPA, then the PSC limit in low Chinook salmon abundance years would be 45,000 Chinook salmon. The 45,000 PSC limit would function the same as the 60,000 Chinook salmon PSC limit under Amendment 91. NMFS would issue allocations of the 45,000 PSC limit to the AFA catcher/processor sector, the AFA mothership sector, the AFA inshore cooperatives, and the CDQ groups using the same seasonal and sector apportionments. Separate allocations would be issued for the A season and the B season. Chinook salmon remaining from the A season could be used in the B season ("rollover"). Entities could transfer PSC allocations within a season and could also receive transfers of Chinook salmon bycatch to cover overages ("post-delivery transfers").

The inclusion of a lower PSC limit and performance standard is based on the need to reduce bycatch when these Chinook salmon stocks are critically low in order to

minimize the impact of the pollock fishery on the stocks. Any additional Chinook salmon returning to Alaska rivers improves the ability to meet the State's spawning escapement goals, which is necessary for long-term sustainability of Chinook salmon and the people reliant on salmon fisheries. While the performance standard is the functional limit in the IPAs, the Council and NMFS determined that the 60,000 PSC limit should also be reduced given the potential for decreased bycatch reduction incentives should a sector exceed its performance standard before the PSC limit is reached. The reduced PSC limit is intended to encourage vessels to avoid bycatch to a greater degree in years of low abundance, and to set a maximum permissible PSC limit that reduces the risk of adverse impact on stocks in western Alaska during periods of low abundance.

Proposed Changes to Monitoring and Enforcement Requirements

This proposed rule would amend the monitoring and enforcement regulations to clarify and strengthen those implemented by Amendment 91. These changes would: revise salmon retention and handling requirements on catcher vessels; improve observer data entry and transmission requirements aboard catcher vessels; clarify the requirements applicable to viewing salmon in a storage container; and clarify the requirements for the removal of salmon from an observer sample area at the end of a haul or delivery.

Salmon Retention and Handling on Catcher Vessels

Current catch handling practices on catcher vessels includes the delivery of "deckloaded" pollock to shoreside processors or stationary floating processors. Deckloading is the practice of retaining catch in the codend of the net rather than dumping the catch in refrigerated saltwater tanks (RSW). For reasons detailed in the Section 2.7 of the Analysis, NMFS has recognized deckloading as a historic and

operationally important practice for catcher vessels participating in the pollock fishery. This proposed rule would move regulations currently at § 679.21(c) to § 679.21(f)(15), modify regulations currently at § 679.21(c)(2)(ii) to remove the requirement to store all salmon bycatch in an RSW, which is not possible when a vessel's catch exceeds the storage capacity of the RSW tanks, and add the following requirements at § 679.21(f)(15)(ii)(B) to clarify catch handling, sorting, and storage requirements on board catcher vessels:

- 1) All salmon must be retained until delivery to the processor.
- 2) The vessel operator must notify the observer at least 15 minutes prior to the transfer of fish from one storage location to another, or any sorting, handling, or discard of catch prior to delivery.
- 3) After the observer has completed sampling duties, catch must be secured on board the vessel until delivery. (Catch may be handled after securing it, but only if the observer is notified and catch re-secured after the completion of catch handling activity.)

These additional catch handling and notification requirements would facilitate observer sampling during the delivery, and ensure observers are given the opportunity to monitor all catch handling activities when sorting or discard of salmon may occur. This would ensure accurate salmon accounting at the processor receiving the vessel's catch.

Observer Data Entry and Transmission Requirements Aboard Catcher Vessels

Catcher vessels participating in the pollock fishery are required to carry an observer on all trips but only catcher vessels greater than or equal to 125 ft length overall (LOA) are required to provide a computer, data entry software, and data transmission

capabilities to the observer. Currently, an observer on board a catcher vessel less than 125 ft LOA sends data to NMFS on paper forms via facsimile at the completion of each trip. Observer data sent to NMFS via fax can take a week or more to be available for management purposes. Access to a computer for electronic data entry significantly increases the speed at which observer data can be made available for inseason management and catch accounting. Further, the data validation measures built into the software improve initial data quality and decrease the need for corrections during the observer debriefing process. Additional information about the projected costs and benefits of this proposed regulatory amendment are detailed in Sections 2.7 and 4.8.4 of the Analysis.

This proposed regulatory amendment will clarify the existing observer data entry and communications requirements and expand the equipment and software requirements to apply to all catcher vessels less than 125 ft LOA participating in the pollock fishery. NMFS proposes to reorganize regulations at § 679.51(e)(1)(iii) to separate the equipment requirements from the applicability paragraphs to clearly identify which vessel operators must provide a computer, software, and data transmission capabilities. As a result of this proposed action, current requirements for observer data entry equipment, software, and transmission would remain, and the computer and software requirements would be expanded to apply to catcher vessels less than 125 ft LOA participating in the pollock fishery.

Viewing Salmon in a Storage Container

Regulations at § 679.28(d)(7)(ii) require that all salmon stored in the salmon storage container on a catcher/processor or mothership must remain in view of the

observer at the observer sampling station at all times during the sorting of each haul.

NMFS proposes to revise the wording of this regulation to better reflect the intent that the salmon storage container (and not each individual salmon in the container) must remain in view of the observer at the observer sampling station at all times during the sorting of each haul.

Removal of Salmon from Observer Sample Area at the End of a Haul or Delivery

Current regulations do not require that all salmon be removed from the observer sampling area and the salmon storage location at the end of each haul or each delivery.

NMFS proposes to modify regulations at § 679.21(f)(15)(ii)(A)(3) and § 679.21(f)(15)(ii)(C)(6) to require that all salmon must be removed, in the presence of the observer, from the salmon storage container and adjacent area at the end of each haul or delivery after the observer has completed his or her data collection duties. NMFS proposes this revision to the regulations to ensure that salmon are properly accounted for between hauls and deliveries.

Other Regulatory Changes

NMFS proposes to revise to the regulations for clarity and efficiency, as follows—

- Remove Tables 47a, b, c, and d to part 679;
- Correct a cross reference error in paragraph (6) of the definition of a fishing trip in § 679.2.
- Remove the requirement to submit an application form with a proposed IPA or amended IPA at § 679.21(f)(12)(iii)(A) and § 679.21(f)(12)(v)(C);

- Remove the requirement at § 679.21(f)(12)(v)(C)(2) that an amendment to the list of IPA participants be received by NMFS no later than 1700 hours, Alaska local time, on December 1;
- Move and consolidate the regulations for the non-Chinook salmon PSC limit and Chum Salmon Savings Area from § 679.21(e) to § 679.21(f)(14);
- Move and consolidate the regulations for Chinook salmon bycatch in the Aleutian Islands pollock fishery from § 679.21(e) to § 679.21(g);
- Correct a cross reference error in § 679.51(e)(2);
- Remove “aboard the vessel” from § 679.51(e)(2)(iii)(B)(3); and
- Make additional very minor non-substantive technical edits.

Remove Tables 47a, b, c, and d

NMFS proposes to remove Tables 47a, b, c, and d to part 679 from the regulations and would instead maintain these tables on the NMFS Alaska Region Web site.

Removing these tables would not impose any costs on industry and would decrease the costs of regulatory amendments necessary to update the tables in the future.

NMFS added Tables 47a, b, c, and d to part 679 with the final rule to implement Amendment 91. At that time, Tables 47a, b, c, and d were the most efficient way to be transparent about the values NMFS uses in making the necessary calculations under Amendment 91: the percent of each sector’s pollock allocation, numbers of Chinook salmon associated with each vessel in the sector used to calculate the opt-out allocation and annual threshold amounts, and the percent of the pollock allocation associated with each vessel that NMFS uses to calculate minimum participation in the IPAs.

Since these tables were published in August 2010, catcher vessels have changed names and consolidated pollock allocations. In June 2014, NMFS recalculated the pollock allocations and Chinook salmon limits for catcher vessels whose allocation and limits has changes since 2010. NMFS revised Table 47c to show the original and revised information and published the revised table on the NMFS Alaska Region's Web site.

However, a regulatory amendment is required to change these tables in the regulations. Changes to the information in these tables may become more frequent as vessels change names, ownership, or are replaced under the provisions of the recently implemented regulations for Amendment 106 (79 FR 54590, September 12, 2014). Removing these tables from regulation, and posting the necessary information on the Alaska Region Web site, would reduce inaccuracies that could exist between actual vessel characteristics and the table in regulations.

Correct a Cross Reference Error in the Definition of a Fishing Trip

The proposed rule would correct a cross reference error in paragraph (6) of the definition of a fishing trip in § 679.2. This paragraph defines a fishing trip for purposes of implementing the post-delivery transfer provisions under Amendment 91. These provisions are described in more detail on page 14026 and 14027 of the proposed rule for Amendment 91 (75 FR 14016; March 23, 2010). The cross reference to the CDQ Program prohibition in paragraph (6) of the fishing trip definition should refer to § 679.7(d)(5)(ii)(C)(2) instead of § 679.7(d)(9).

Remove Requirement to Submit an Application with a Proposed or Amended IPA

NMFS proposes to remove the requirement at § 679.21(f)(12)(iii)(A) and § 679.21(f)(12)(v)(C) that an IPA representative submit an application form along with a

proposed IPA or amended IPA based on public comment under the Paperwork Reduction Act. Under the Paperwork Reduction Act, every three years NMFS is required to obtain approval from the Office of Management and Budget (OMB) to continue to collect information authorized under previous final rules. The most recent request for public comments on renewal of the information collection authorized under the AFA (OMB Control Number 0648-0401) was published in the **Federal Register** on June 19, 2014 (79 FR 35150). In response to this request for comments, NMFS received a comment that the requirement to submit an application form in addition to submitting a proposed or amended IPA was duplicative with the information in the IPA itself. NMFS agrees that the application form is unnecessary and therefore proposes removing it from the regulations.

Remove the Deadline for an Amendment to the List of IPA Participants

NMFS proposes to remove the requirement at § 679.21(f)(12)(v)(C)(2) that an amendment to the list of IPA participants (vessels) must be received by NMFS no later than 1700 hours, A.l.t., on December 1. In removing this requirement, NMFS proposes to add a requirement at § 679.21(f)(12)(ii)(D) that once a member of an IPA, a vessel owner or CDQ group cannot withdraw from the IPA during the fishing year. This change more directly implements the Amendment 91 requirement that IPA members cannot leave an IPA mid-year and that changes to an IPA membership must be made after the directed pollock fishery closes by regulation (after November 1 of each year).

Move and Consolidate the Regulations for the Non-Chinook Salmon PSC Limit and Chum Salmon Savings Area

Regulations at § 679.21(e)(1)(vii), (e)(3)(i)(A)(3)(ii), (e)(7)(vii), and (e)(7)(ix) pertain to the non-Chinook salmon PSC limit, the allocation of the non-Chinook salmon PSC to the CDQ Program, the closure of the Chum Salmon Savings Area, and the exemption to the closure for participants in an ICA. NMFS proposes to move these regulations to § 679.21(f)(14) where other salmon bycatch regulations are found because they are management measures to address salmon bycatch in the pollock fishery. NMFS does not propose any substantive changes to these regulations, except to replace the term “ICA” with “IPA” in the regulations to be consistent with the proposed revisions described earlier in this preamble.

Move and Consolidate the Regulations for Chinook Salmon Bycatch in the Aleutian Islands Pollock Fishery

Regulations at § 679.21(e)(1)(viii), (e)(3)(i)(A)(3)(i), and (e)(7)(viii) pertain to the Chinook salmon PSC limit for the Aleutian Islands pollock fishery, the allocation of the Aleutian Islands Chinook salmon PSC to the CDQ Program, and closure of the Aleutian Islands Chinook Salmon Savings Area. NMFS proposes to move these regulations to § 679.21(g). NMFS does not propose any substantive changes to these regulations.

Correct a Cross Reference Error in § 679.51(e)(2)

The proposed rule would correct a cross reference error in § 679.51(e)(2). This paragraph describes the applicability of manager responsibilities for a shoreside processor or stationary floating processor required to maintain observer coverage. The cross reference to the observer requirements for shoreside processors and stationary floating processors should refer to § 679.51(b) instead of § 679.51(d).

Remove “Aboard the vessel” from § 679.51(e)(2)(iii)(B)(3)

Regulations at § 679.51(e)(2)(iii)(B)(3) pertain to the observer data entry and communications equipment required at a shoreside processor or stationary floating processor, some of which are not vessels. Therefore, NMFS proposes to remove the language “aboard the vessel” from this paragraph for clarity.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended Amendment 110 based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA for this proposed action describes the reasons why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected

reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of the proposed action, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

Number and Description of Small Entities Regulated by the Proposed Action

The proposed action applies only to those entities that participate in the directed pollock trawl fishery in the Bering Sea. These entities include vessels harvesting pollock under the AFA and the six CDQ groups that receive allocations of pollock.

The RFA requires consideration of affiliations among entities for the purpose of assessing if an entity is small. The AFA pollock cooperatives are a type of affiliation. All the non-CDQ entities directly regulated by the proposed action were members of AFA cooperatives in 2014 and, therefore, NMFS considers them “affiliated” large (non-small) entities for RFA purposes. Section 5.6 of the IRFA notes that all of the AFA cooperatives have gross annual revenues that are substantially greater than \$20.5 million, the standard used by the Small Business Administration to define the annual gross revenue of a large (non-small) business engaged in finfish harvesting, such as pollock. Therefore, all the non-CDQ pollock fishery participants are defined as large (non-small) entities.

Due to their status as non-profit corporations, the six CDQ groups are identified as “small” entities for RFA purposes. This proposed action directly regulates the six CDQ groups. As described in regulations implementing the RFA (13 CFR 121.103), the CDQ groups’ affiliations with other large entities do not define them as large entities.

The six CDQ groups, formed to manage and administer the CDQ allocations, investments, and economic development projects, are the Aleutian Pribilof Island Community Development Association, the Bristol Bay Economic Development Corporation, the Central Bering Sea Fishermen’s Association, the Coastal Villages Region Fund, the Norton Sound Economic Development Corporation, and the Yukon Delta Fisheries Development Association. The 65 communities, with approximately 27,000 total residents, benefit from participation in the CDQ Program, but are not directly regulated by this action.

Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule would revise some existing requirements and remove some requirements. The revised requirements are those related to—

- Development and submission of proposed IPAs and amendments to approved IPAs;
- An annual report from the participants in each IPA, documenting information and data relevant to the Bering Sea Chinook salmon bycatch management program; and
- Salmon handling and storage on board a vessel, and obligations to facilitate observer data reporting.

The proposed rule would remove the requirements for an application form for a proposed IPA or amended IPA.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities

The proposed action is a comprehensive program to minimize Chinook and chum salmon bycatch that accomplished the stated objectives and is consistent with applicable statutes. No alternatives were identified in addition to those analyzed in the IRFA that had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. Section 2.10 of the Analysis contains a detailed discussion of alternatives considered and eliminated from further analysis (see **ADDRESSES**).

This proposed rule includes performance standards, rather than design standards, to minimize Chinook salmon and chum salmon bycatch, while limiting the burden on CDQ groups. A system of transferable PSC allocations and a performance standard, even in years of low Chinook salmon abundance, would allow CDQ groups to decide how best to comply with the requirements of this action, given the other constraints imposed on the pollock fishery (e.g., pollock TAC, market conditions, area closures associated with other rules, gear restrictions, climate and oceanographic change).

Tribal Summary Impact Statement (E.O. 13175)

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Tribal

Consultation and Coordination Policy of the U.S. Department of Commerce (May 21, 2013), outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 in Division H of Public Law No. 108–199 (188 Stat. 452), as amended by section 518 in Division H of Public Law No. 108–447 (118 Stat. 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations.

NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act regional and village corporations on a government-to-government basis pursuant to Executive Order 13175 which establishes several requirements for NMFS, including 1) to provide regular and meaningful consultation and collaboration with Indian tribal governments and Alaska Native corporations in the development of Federal regulatory practices that significantly or uniquely affect their communities, 2) to reduce the imposition of unfunded mandates on Indian tribal governments, and 3) to streamline the applications process for and increase the availability of waivers to Indian tribal governments. Executive Order 13175 requires Federal agencies to have an effective process to involve and consult with representatives of Indian tribal governments in developing regulatory policies and prohibits regulations that impose substantial, direct compliance costs on Indian tribal governments.

Section 5(b)(2)(B) of Executive Order 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal

officials have been met. If the Secretary of Commerce approves Amendment 110, a tribal impact summary statement that summarizes and responds to issues raised in all tribal consultations on the proposed action and describes the extent to which the concerns of tribal officials have been met will be included in the final rule for Amendment 110.

The consultation process for this action started during the Council process when the Council started developing Amendment 110. A number of tribal representatives and tribal organizations provided written public comments and oral public testimony to the Council during Council outreach meetings on Amendment 110 and at the numerous Council meetings at which Amendment 110 was discussed.

NMFS conducted two tribal consultations, one in December 2014 and one in April 2015, with representatives from the Tanana Chiefs Conference; the Association of Village Council Presidents; the Yukon River Drainage Fisheries Association; the Kawerak, Inc.; and the Bering Sea Fishermen's Association. These organizations prepared letters for the Council and requested the consultations to discuss the salmon bycatch management measures under consideration by the Council. NMFS posted reports from these consultations on the NMFS Alaska Region Web site at <https://alaskafisheries.noaa.gov/tribal-consultations>.

NMFS continued the consultation process by sending a letter to all Alaska Native representatives when the Notice of Availability for Amendment 110 published in the **Federal Register** notifying them of the opportunity to comment.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These

requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

OMB Control Number 0648-0318

Public reporting burden is estimated to average 5 minutes per individual response for use of a vessel's computer, software, and data transmission; 5 minutes per individual response for notification of observer before handling the vessel's Bering Sea pollock catch; and 5 minutes for notification of crew person responsible for ensuring all sorting, retention, and storage of salmon.

OMB Control Number 0648-0393

Public reporting burden is estimated to average 8 hours per individual response for the Application to Receive Transferable Chinook Salmon PSC Allocations, including the attached contract; 4 hours for the amendment to contract; and 15 minutes for the Application for the Transfer of Chinook Salmon PSC Allocations.

OMB Control Number 0648-0401

Public reporting burden is estimated to average 40 hours per individual response for the Salmon Bycatch Incentive Plan Agreement (IPA); and 8 hours for the IPA Annual Report.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding (1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the

burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, e-mail to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:

http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 28, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

**PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF
ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111-281.

2. In § 679.2:

a. Remove the definition for “Chinook salmon bycatch incentive plan agreement (IPA)”;

b. Revise the definitions for “Chum Salmon Savings Area of the BSAI CVOA”, and paragraph (6) of “Fishing trip”;

c. Remove the definition for “Non-Chinook salmon bycatch reduction intercooperative agreement (ICA)”;

d. Revise the definition for “PSQ reserve”; and

c. Add the definition for “Salmon bycatch incentive plan agreement (IPA)” in alphabetical order;

The revisions and additions read as follows:

§ 679.2 Definitions.

* * * * *

Chum Salmon Savings Area of the BSAI CVOA (See § 679.21(f)(14) and Figure 9 to this part).

* * * * *

Fishing trip means: * * *

(6) For purposes of § 679.7(d)(5)(ii)(C)(2) for CDQ groups and § 679.7(k)(8)(ii) for AFA entities, the period beginning when a vessel operator commences harvesting any pollock that will accrue against a directed fishing allowance for pollock in the BS or against a pollock CDQ allocation harvested in the BS and ending when the vessel operator offloads or transfers any processed or unprocessed pollock from that vessel.

* * * * *

PSQ reserve means the amount of a prohibited species catch limit established under § 679.21 that has been allocated to the CDQ Program under § 679.21.

* * * * *

Salmon bycatch incentive plan agreement (IPA) is a voluntary private contract, approved by NMFS under § 679.21(f)(12), that establishes incentives for participants to avoid Chinook salmon and chum salmon bycatch while directed fishing for pollock in the BS.

* * * * *

3. In § 679.7:

- a. Revise paragraphs (d)(5)(ii)(B), (d)(5)(ii)(C)(5), and (k)(8) heading;
- b. Redesignate paragraph (k)(8)(iv) as (k)(8)(v); and
- c. Add new paragraph (k)(8)(iv).

The revisions and addition read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(5) * * *

(ii) * * *

(B) *Non-Chinook salmon*. For the operator of a vessel, to use trawl gear to harvest pollock CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-Chinook salmon PSQ is attained, unless the vessel is participating in an approved IPA under § 679.21(f)(12).

(C) * * *

(5) For the operator of a catcher vessel delivering pollock CDQ catch to a shoreside processor or stationary floating processor to:

(i) Deliver pollock CDQ to a processor that does not have a catch monitoring and control plan approved under § 679.28(g).

(ii) Handle, sort, or discard catch without notifying the observer 15 minutes prior to handling, sorting, or discarding catch as described in § 679.21(f)(15)(ii)(B)(2).

(iii) Fail to secure catch after the completion of catch handling and the collection of scientific data and biological samples as described in § 679.21(f)(15)(ii)(B)(3).

* * * * *

(k) * * *

(8) *Salmon PSC*. * * *

* * * * *

(iv) *Catcher vessels*. (A) For the operator of a catcher vessel, to handle, sort, or discard catch without notifying the observer 15 minutes prior to handling, sorting, or discarding catch as described in § 679.21(f)(15)(ii)(B)(2).

(B) For the operator of a catcher vessel to fail to secure catch after the completion of catch handling and the collection of scientific data and biological samples as described in § 679.21(f)(15)(ii)(B)(3).

* * * * *

4. In § 679.20, revise paragraph (a)(5)(i)(B)(1) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(B) * * *

(1) *Inshore, catcher/processor, mothership, and CDQ sectors.* The portions of the BS subarea pollock directed fishing allowances allocated to each sector under sections 206(a) and 206(b) of the AFA and the CDQ allowance in the BSAI will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows:

(i) A Season, 45 percent;

(ii) B Season, 55 percent.

* * * * *

5. In § 679.21:

a. Remove and reserve paragraph (c);

b. Remove paragraphs (e)(1)(vi), (vii), and (viii); (e)(3)(i)(A)(3); and (e)(7)(vii), (viii), and (ix); and

c. Revise paragraphs (f) and (g) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(f) *Salmon Bycatch Management in the BS Pollock Fishery* — (1) *Applicability*. This paragraph contains regulations governing the bycatch of salmon in the BS pollock fishery.

(2) *Chinook salmon prohibited species catch (PSC) limit*. Each year, NMFS will allocate to AFA sectors listed in paragraph (f)(3)(ii) of this section a portion of the applicable Chinook salmon PSC limit. NMFS will publish the applicable Chinook salmon PSC limit in the annual harvest specifications after determining if it is a low Chinook salmon abundance year. NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon. By October 1 of each year, the State of Alaska will provide to NMFS an estimate of Chinook salmon abundance based on a post-season in-river Chinook salmon run size index for western Alaska based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

(i) An AFA sector will receive a portion of the 47,591 Chinook salmon PSC limit, or, in a low Chinook salmon abundance year, the 33,318 Chinook salmon PSC limit, if —

(A) No Chinook salmon bycatch incentive plan agreement (IPA) is approved by NMFS under paragraph (f)(12) of this section; or

(B) That AFA sector has exceeded its performance standard under paragraph (f)(6) of this section.

(ii) An AFA sector will receive a portion of the 60,000 Chinook salmon PSC limit, or, in a low Chinook salmon abundance year, the 45,000 Chinook salmon PSC limit, if —

(A) At least one IPA is approved by NMFS under paragraph (f)(12) of this section; and

(B) That AFA sector has not exceeded its performance standard under paragraph (f)(6) of this section.

(3) *Allocations of the Chinook salmon PSC limits—(i) Seasonal apportionment.* NMFS will apportion the Chinook salmon PSC limits annually 70 percent to the A season and 30 percent to the B season, which are described in § 679.23(e)(2).

(ii) *AFA sectors.* Each year, NMFS will make allocations of the applicable Chinook salmon PSC limit to the following four AFA sectors:

AFA Sector:	Eligible participants are:
(A) Catcher/processor	AFA catcher/processors and AFA catcher vessels delivering to AFA catcher/processors, all of which are permitted under § 679.4(l)(2) and (l)(3)(i)(A), respectively.
(B) Mothership	AFA catcher vessels harvesting pollock for processing by AFA motherships, all of which are permitted under § 679.4(l)(3)(i)(B) and (l)(4), respectively.
(C) Inshore	AFA catcher vessels harvesting pollock for processing by AFA inshore processors, all of which are permitted under § 679.4(l)(3)(i)(C).
(D) CDQ Program	The six CDQ groups authorized under section 305(i)(1)(D) of the Magnuson-Stevens Act to participate in the CDQ Program.

(iii) *Allocations to each AFA sector.* NMFS will allocate the Chinook salmon PSC limits to each AFA sector as follows:

(A) If a sector is managed under the 60,000 Chinook salmon PSC limit, the maximum amount of Chinook salmon PSC allocated to each sector in each season and annually is —

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(1) Catcher/processor	32.9	13,818	17.9	3,222	28.4	17,040
(2) Mothership	8.0	3,360	7.3	1,314	7.8	4,674
(3) Inshore	49.8	20,916	69.3	12,474	55.6	33,390
(4) CDQ Program	9.3	3,906	5.5	990	8.2	4,896

(B) If the sector is managed under the 45,000 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(1) Catcher/processor	32.9	10,363	17.9	2,415	28.4	12,780
(2) Mothership	8.0	2,520	7.3	987	7.8	3,510
(3) Inshore	49.8	15,687	69.3	9,355	55.6	25,020
(4) CDQ Program	9.3	2,930	5.5	743	8.2	3,690

(C) If the sector is managed under the 47,591 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(1) Catcher/processor	32.9	10,906	17.9	2,556	28.4	13,516
(2) Mothership	8.0	2,665	7.3	1,042	7.8	3,707
(3) Inshore	49.8	16,591	69.3	9,894	55.6	26,485
(4) CDQ Program	9.3	3,098	5.5	785	8.2	3,883

(D) If the sector is managed under the 33,318 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(1) Catcher/processor	32.9	7,673	17.9	1,789	28.4	9,462
(2) Mothership	8.0	1,866	7.3	730	7.8	2,599
(3) Inshore	49.8	11,615	69.3	6,926	55.6	18,525
(4) CDQ Program	9.3	2,169	5.5	550	8.2	2,732

(iv) *Allocations to the AFA catcher/processor and mothership sectors.* (A) NMFS will issue transferable Chinook salmon PSC allocations under paragraph (f)(3)(iii) of this section to entities representing the AFA catcher/processor sector and the AFA mothership sector if these sectors meet the requirements of paragraph (f)(8) of this section.

(B) If no entity is approved by NMFS to represent the AFA catcher/processor sector or the AFA mothership sector, then NMFS will manage that sector under a non-transferable Chinook salmon PSC allocation under paragraph (f)(10) of this section.

(v) *Allocations to inshore cooperatives and the AFA inshore open access fishery.* NMFS will further allocate the inshore sector's Chinook salmon PSC allocation under paragraph (f)(3)(iii) of this section among the inshore cooperatives and the inshore open access fishery based on the percentage allocations of pollock to each inshore cooperative under § 679.62(a). NMFS will issue transferable Chinook salmon PSC allocations to inshore cooperatives. Any Chinook salmon PSC allocated to the inshore open access fishery will be as a non-transferable allocation managed by NMFS under the requirements of paragraph (f)(10) of this section.

(vi) *Allocations to the CDQ Program.* NMFS will further allocate the Chinook salmon PSC allocation to the CDQ Program under paragraph (f)(3)(iii) of this section among the six CDQ groups based on each CDQ group's percentage of the CDQ Program pollock allocation. NMFS will issue transferable Chinook salmon PSC allocations to CDQ groups.

(vii) *Accrual of Chinook salmon bycatch to specific PSC allocations.*

If a Chinook salmon PSC allocation is:	Then all Chinook salmon bycatch:
(A) A transferable allocation to a sector-level entity, inshore cooperative, or CDQ group under paragraph (f)(8) of this section.	By any vessel fishing under a transferable allocation will accrue against the allocation to the entity representing that vessel.
(B) A non-transferable allocation to a sector or the inshore open access fishery under paragraph (f)(10) of this section.	By any vessel fishing under a non-transferable allocation will accrue against the allocation established for the sector or inshore open access fishery, whichever is applicable.
(C) The opt-out allocation under paragraph (f)(5) of this section	By any vessel fishing under the opt-out allocation will accrue against the opt-out allocation.

(viii) *Public release of Chinook salmon PSC information.* For each year, NMFS will release to the public and publish on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>):

- (A) The Chinook salmon PSC allocations for each entity receiving a transferable allocation;
- (B) The non-transferable Chinook salmon PSC allocations;
- (C) The vessels fishing under each transferable or non-transferable allocation;
- (D) The amount of Chinook salmon bycatch that accrues towards each transferable or non-transferable allocation;

(E) Any changes to these allocations due to transfers under paragraph (f)(9) of this section, rollovers under paragraph (f)(11) of this section, and deductions from the B season non-transferable allocations under paragraphs (f)(5)(v) or (f)(10)(iii) of this section; and

(F) Tables for each sector that provide the percent of the sector's pollock allocation, numbers of Chinook salmon associated with each vessel in the sector used to calculate the opt-out allocation and annual threshold amounts, and the percent of the pollock allocation associated with each vessel that NMFS will use to calculate IPA minimum participation assigned to each vessel.

(4) *Reduction in allocations of the Chinook salmon PSC limit* — (i) *Reduction in sector allocations.* NMFS will reduce the seasonal allocation of the Chinook salmon PSC limit to the catcher/processor sector, the mothership sector, the inshore sector, or the CDQ Program under paragraph (f)(3)(iii)(A) or (B) of this section, if the owner of any permitted AFA vessel in that sector, or any CDQ group, does not participate in an approved IPA under paragraph (f)(12) of this section. NMFS will subtract the amount of Chinook salmon from each sector's allocation associated with each vessel not participating in an approved IPA.

(ii) *Adjustments to the inshore sector and inshore cooperative allocations.* (A) If some members of an inshore cooperative do not participate in an approved IPA, NMFS will reduce the allocation to the cooperative to which those vessels belong, or the inshore open access fishery.

(B) If all members of an inshore cooperative do not participate in an approved IPA, the amount of Chinook salmon that remains in the inshore sector's allocation, after

subtracting the amount of Chinook salmon associated with the non-participating inshore cooperative, will be reallocated among the inshore cooperatives participating in an approved IPA based on the proportion each participating cooperative represents of the Chinook salmon PSC initially allocated among the participating inshore cooperatives that year.

(iii) *Adjustment to CDQ group allocations.* If a CDQ group does not participate in an approved IPA, the amount of Chinook salmon that remains in the CDQ Program's allocation, after subtracting the amount of Chinook salmon associated with the non-participating CDQ group, will be reallocated among the CDQ groups participating in an approved IPA based on the proportion each participating CDQ group represents of the Chinook salmon PSC initially allocated among the participating CDQ groups that year.

(iv) *All members of a sector do not participate in an approved IPA.* If all members of a sector do not participate in an approved IPA, the amount of Chinook salmon that remains after subtracting the amount of Chinook salmon associated with the non-participating sector will not be reallocated among the sectors that have members participating in an approved IPA. This portion of the PSC limit will remain unallocated for that year.

(5) *Chinook salmon PSC opt-out allocation.* The following table describes requirements for the opt-out allocation:

(i) What is the amount of Chinook salmon PSC that will be allocated to the opt-out allocation in the A season and the B season?	The opt-out allocation will equal the sum of the Chinook salmon PSC deducted under paragraph (f)(4)(i) of this section from the seasonal allocations of each sector with members not participating in an approved IPA.
(ii) Which participants will be managed under the opt-out allocation?	Any AFA-permitted vessel or any CDQ group that is a member of a sector eligible under paragraph (f)(2)(ii) of this section to receive allocations of the 60,000 PSC

	limit or the 45,000 PSC limit, but that is not participating in an approved IPA.
(iii) What Chinook salmon bycatch will accrue against the opt-out allocation?	All Chinook salmon bycatch by participants under paragraph (f)(5)(ii) of this section.
(iv) How will the opt-out allocation be managed?	All participants under paragraph (f)(5)(ii) of this section will be managed as a group under the seasonal opt-out allocations. If the Regional Administrator determines that the seasonal opt-out allocation will be reached, NMFS will publish a notice in the Federal Register closing directed fishing for pollock in the BS, for the remainder of the season, for all vessels fishing under the opt-out allocation.
(v) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation exceeds the amount allocated to the A season opt-out allocation?	NMFS will deduct from the B season opt-out allocation any Chinook salmon bycatch in the A season that exceeds the A season opt-out allocation.
(vi) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation is less than the amount allocated to the A season opt-out allocation?	If Chinook salmon bycatch by vessels fishing under the opt-out allocation in the A season is less than the amount allocated to the opt-out allocation in the A season, this amount of Chinook salmon will not be added to the B season opt-out allocation.
(vii) Is Chinook salmon PSC allocated to the opt-out allocation transferable?	No. Chinook salmon PSC allocated to the opt-out allocation is not transferable.

(6) *Chinook salmon bycatch performance standard.* If the total annual Chinook salmon bycatch by the members of a sector participating in an approved IPA is greater than that sector's annual threshold amount of Chinook salmon in any three of seven consecutive years, that sector will receive an allocation of Chinook salmon under the 47,591 PSC limit in all future years, except in low Chinook salmon abundance years when that sector will receive an allocation under the 33,318 Chinook salmon PSC limit.

(i) *Annual threshold amount.* Prior to each year, NMFS will calculate each sector's annual threshold amount. NMFS will post the annual threshold amount for each

sector on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>). At the end of each year, NMFS will evaluate the Chinook salmon bycatch by all IPA participants in each sector against that sector's annual threshold amount.

(ii) *Calculation of the annual threshold amount.* A sector's annual threshold amount is the annual number of Chinook salmon that would be allocated to that sector under the 47,591 Chinook salmon PSC limit, as shown in the table in paragraph (f)(3)(iii)(C) of this section, or the 33,318 Chinook salmon PSC limit in low Chinook salmon abundance years, as shown in the table in paragraph (f)(3)(iii)(D) of this section. If any vessels in a sector do not participate in an approved IPA, NMFS will reduce that sector's annual threshold amount by the number of Chinook salmon associated with each vessel not participating in an approved IPA. If any CDQ groups do not participate in an approved IPA, NMFS will reduce the CDQ Program's annual threshold amount by the number of Chinook salmon associated with each CDQ group not participating in an approved IPA.

(iii) *Exceeding the performance standard.* If NMFS determines that a sector has exceeded its performance standard by exceeding its annual threshold amount in any three of seven consecutive years, NMFS will issue a notification in the **Federal Register** that the sector has exceeded its performance standard. In all subsequent years, NMFS will allocate to that sector either the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(C) of this section or, in low Chinook salmon abundance years, the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(D) of this section. All members of the affected sector will fish under this lower PSC allocation regardless of whether a vessel or CDQ group within that sector participates in an approved IPA.

(7) *Replacement vessels.* If an AFA-permitted vessel is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, NMFS will assign the portion and number of Chinook salmon associated with that vessel to the replacement vessel or distribute it among other eligible vessels in the sector based on the procedures in the law, regulation, or private contract that accomplishes the vessel removal or replacement action.

(8) *Entities eligible to receive transferable Chinook salmon PSC allocations.* (i) NMFS will issue transferable Chinook salmon PSC allocations to the following entities, if these entities meet all the applicable requirements of this section.

(A) *Inshore cooperatives.* NMFS will issue transferable Chinook salmon PSC allocations to the inshore cooperatives permitted annually under § 679.4(l)(6). The representative and agent for service of process (see definition at § 679.2) for an inshore cooperative is the cooperative representative identified in the application for an inshore cooperative fishing permit issued under § 679.4(l)(6), unless the inshore cooperative representative notifies NMFS in writing that a different person will act as its agent for service of process for purposes of this paragraph (f). An inshore cooperative is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(B) *CDQ groups.* NMFS will issue transferable Chinook salmon PSC allocations to the CDQ groups. The representative and agent for service of process for a CDQ group is the chief executive officer of the CDQ group, unless the chief executive officer notifies NMFS in writing that a different person will act as its agent for service of process. A

CDQ group is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(C) *Entity representing the AFA catcher/processor sector.* NMFS will authorize only one entity to represent the catcher/processor sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the catcher/processors eligible to fish under transferable Chinook salmon PSC allocations. NMFS will issue transferable Chinook salmon allocations under the Chinook salmon PSC limit to the entity representing the catcher/processor sector if that entity represents all the owners of AFA-permitted vessels in this sector that are participants in an approved IPA.

(D) *Entity representing the AFA mothership sector.* NMFS will authorize only one entity to represent the mothership sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the vessels eligible to fish under transferable Chinook salmon PSC allocations. NMFS will issue transferable Chinook salmon allocations under the Chinook salmon PSC limit to an entity representing the mothership sector if that entity represents all the owners of AFA-permitted vessels in this sector that are participants in an approved IPA.

(ii) *Request for approval as an entity eligible to receive transferable Chinook salmon PSC allocations.* A representative of an entity representing the catcher/processor sector or the mothership sector may request approval by NMFS to receive transferable Chinook salmon PSC allocations on behalf of the members of the sector. The application must be submitted to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and a contract, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in, including the affidavit affirming that each eligible vessel owner, from whom the applicant received written notification requesting to join the sector entity, has been allowed to join the sector entity subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the sector entity. The application form is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>) or from NMFS at the address in paragraph (b)(6) of this section.

(B) *Contract.* A contract containing the following information must be attached to the completed application form:

(1) Information that documents that all vessel owners party to the contract agree that the entity, the entity's representative, and the entity's agent for service of process named in the application form represent them for purposes of receiving transferable Chinook salmon PSC allocations.

(2) A statement that the entity's representative and agent for service of process are authorized to act on behalf of the vessel owners party to the contract.

(3) Signatures, printed names, and date of signature for the owners of each AFA-permitted vessel identified in the application form.

(C) *Contract duration.* Once submitted, the contract attached to the application form is valid until amended or terminated by the parties to the contract.

(D) *Deadline.* An application form and contract must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which the Chinook salmon PSC allocations are effective.

(E) *Approval*. If more than one entity application form is submitted to NMFS, NMFS will approve the application form for the entity that represents the most eligible vessel owners in the sector.

(F) *Amendments to the sector entity*. (1) An amendment to the sector entity contract, with no change in entity participants, may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the entity representative. To amend a contract, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section.

(2) To make additions or deletions to the vessel owners represented by the entity for the next year, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section, by December 1.

(iii) *Entity representative*. (A) The entity's representative must —

(1) Act as the primary contact person for NMFS on issues relating to the operation of the entity;

(2) Submit on behalf of the entity any applications required for the entity to receive a transferable Chinook salmon PSC allocation and to transfer some or all of that allocation to and from other entities eligible to receive transfers of Chinook salmon PSC allocations;

(3) Ensure that an agent for service of process is designated by the entity; and

(4) Ensure that NMFS is notified if a substitute agent for service of process is designated. Notification must include the name, address, and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the entity or its members within the 5-year period from the

time the agent is identified in the application to NMFS under paragraph (f)(8)(ii) of this section.

(B) Any vessel owner that is a member of an inshore cooperative, or a member of the entity that represents the catcher/processor sector or the mothership sector, may authorize the entity representative to sign a proposed IPA submitted to NMFS, under paragraph (f)(12) of this section, on his or her behalf. This authorization must be included in the contract submitted to NMFS, under paragraph (f)(8)(ii)(B) of this section, for the sector-level entities and in the contract submitted annually to NMFS by inshore cooperatives under § 679.61(d).

(iv) *Agent for service of process.* The entity's agent for service of process must —

(A) Be authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of an entity receiving a transferable allocation of Chinook salmon PSC or with respect to a CDQ group. Service on or notice to the entity's appointed agent constitutes service on or notice to all members of the entity.

(B) Be capable of accepting service on behalf of the entity until December 31 of the year five years after the calendar year for which the entity notified the Regional Administrator of the identity of the agent.

(v) *Absent a catcher/processor sector or mothership sector entity.* If the catcher/processor sector or the mothership sector does not form an entity to receive a transferable allocation of Chinook salmon PSC, the sector will be managed by NMFS under a non-transferable allocation of Chinook salmon PSC under paragraph (f)(10) of this section.

(9) *Transfers of Chinook salmon PSC.* (i) A Chinook salmon PSC allocation issued to eligible entities under paragraph (f)(8)(i) of this section may be transferred to any other entity receiving a transferable allocation of Chinook salmon PSC by submitting to NMFS an application for transfer described in paragraph (f)(9)(iii) of this section. Transfers of Chinook salmon PSC allocations among eligible entities are subject to the following restrictions:

(A) Entities receiving transferable allocations under the 60,000 PSC limit may only transfer to and from other entities receiving allocations under the 60,000 PSC limit.

(B) Entities receiving transferable allocations under the 45,000 PSC limit may only transfer to and from other entities receiving allocations under the 45,000 PSC limit.

(C) Entities receiving transferable allocations under the 47,591 PSC limit may only transfer to and from other entities receiving allocations under the 47,591 PSC limit.

(D) Entities receiving transferable allocations under the 33,318 PSC limit may only transfer to and from other entities receiving allocations under the 33,318 PSC limit.

(E) Chinook salmon PSC allocations may not be transferred between seasons.

(ii) *Post-delivery transfers.* If the Chinook salmon bycatch by an entity exceeds its seasonal allocation, the entity may receive transfers of Chinook salmon PSC to cover overages for that season. An entity may conduct transfers to cover an overage that results from Chinook salmon bycatch from any fishing trip by a vessel fishing on behalf of that entity that was completed or is in progress at the time the entity's allocation is first exceeded. Under § 679.7(d)(5)(ii)(C)(2) and (k)(8)(v)(B), vessels fishing on behalf of an entity that has exceeded its Chinook salmon PSC allocation for a season may not start a

new fishing trip for pollock in the BS on behalf of that same entity for the remainder of that season.

(iii) *Application for transfer of Chinook salmon PSC allocations*—(A) *Completed application*. NMFS will process a request for transfer of Chinook salmon PSC provided that a paper or electronic application is completed, with all information fields accurately filled in. Application forms are available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>) or from NMFS at the address in paragraph (b)(6) of this section.

(B) *Certification of transferor*—(1) *Non-electronic submittal*. The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(2) *Electronic submittal*. The transferor's designated entity representative must log onto the NMFS online services system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key, and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(C) *Certification of transferee*—(1) *Non-electronic submittal*. The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(2) *Electronic submittal*. The transferee's designated representative must log onto the NMFS online services system and accept the transfer request as indicated on the

computer screen. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(D) *Deadline*. NMFS will not approve an application for transfer of Chinook salmon PSC after June 25 for the A season or after December 1 for the B season.

(10) *Non-transferable Chinook salmon PSC allocations*. (i) All vessels belonging to a sector that is ineligible to receive transferable allocations under paragraph (f)(8) of this section, any catcher vessels participating in an inshore open access fishery, and all vessels fishing under the opt-out allocation under paragraph (f)(5) of this section will fish under specific non-transferable Chinook salmon PSC allocations.

(ii) All vessels fishing under a non-transferable Chinook salmon PSC allocation, including vessels fishing on behalf of a CDQ group, will be managed together by NMFS under that non-transferable allocation. If, during the fishing year, the Regional Administrator determines that a seasonal non-transferable Chinook salmon PSC allocation will be reached, NMFS will publish a notice in the **Federal Register** closing the BS to directed fishing for pollock by those vessels fishing under that non-transferable allocation for the remainder of the season or for the remainder of the year.

(iii) For each non-transferable Chinook salmon PSC allocation, NMFS will deduct from the B season allocation any amount of Chinook salmon bycatch in the A season that exceeds the amount available under the A season allocation.

(11) *Rollover of unused A season allocation*—(i) *Rollovers of transferable allocations*. NMFS will add any Chinook salmon PSC allocation remaining at the end of the A season, after any transfers under paragraph (f)(9)(ii) of this section, to an entity's B season allocation.

(ii) *Rollover of non-transferable allocations.* For a non-transferable allocation for the mothership sector, catcher/processor sector, or an inshore open access fishery, NMFS will add any Chinook salmon PSC remaining in that non-transferable allocation at the end of the A season to that B season non-transferable allocation.

(12) *Salmon bycatch incentive plan agreements (IPAs)*—(i) *Minimum participation requirements.* More than one IPA may be approved by NMFS. Each IPA must have participants that represent the following:

(A) *Minimum percent pollock.* Parties to an IPA must collectively represent at least 9 percent of the BS pollock quota.

(B) *Minimum number of unaffiliated AFA entities.* Parties to an IPA must represent any combination of two or more CDQ groups or corporations, partnerships, or individuals who own AFA-permitted vessels and are not affiliated, as affiliation is defined for purposes of AFA entities in § 679.2.

(ii) *Membership in an IPA.* (A) No vessel owner or CDQ group is required to join an IPA.

(B) For a vessel owner in the catcher/processor sector or mothership sector to join an IPA, that vessel owner must be a member of the entity representing that sector under paragraph (f)(8).

(C) For a CDQ group to be a member of an IPA, the CDQ group must sign the IPA and list in that IPA each vessel harvesting BS pollock CDQ, on behalf of that CDQ group, that will participate in that IPA.

(D) Once a member of an IPA, a vessel owner or CDQ group cannot withdraw from the IPA during a fishing year.

(iii) *Request for approval of a proposed IPA.* The IPA representative must submit a proposed IPA to NMFS at the address in paragraph (b)(6) of this section. The proposed IPA must contain the following information:

(A) *Affidavit.* The IPA must include the affidavit affirming that each eligible vessel owner or CDQ group, from whom the IPA representative received written notification requesting to join the IPA, has been allowed to join the IPA subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the IPA.

(B) *Name of the IPA.*

(C) *Representative.* The IPA must include the name, telephone number, and e-mail address of the IPA representative who submits the proposed IPA on behalf of the parties and who is responsible for submitting proposed amendments to the IPA and the annual report required under paragraph (f)(13) of this section.

(D) *Third party group.* The IPA must identify at least one third party group. Third party groups include any entities representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction but do not directly fish in a groundfish fishery.

(E) *Description of the incentive plan.* The IPA must contain a description of the following —

(I) The incentive(s) that will be implemented under the IPA for the operator of each vessel participating in the IPA to avoid Chinook salmon and chum salmon bycatch under any condition of pollock and Chinook salmon abundance in all years.

(2) How the incentive(s) to avoid chum salmon do not increase Chinook salmon bycatch.

(3) The rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both.

(4) How the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon and chum salmon bycatch rates relative to what would have occurred in absence of the incentive program.

(5) How the incentive measures in the IPA promote Chinook salmon and chum salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon and chum salmon.

(6) How the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's Chinook salmon bycatch to keep total bycatch below the performance standard described in paragraph (f)(6) of this section for the sector in which the vessel participates.

(7) How the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska.

(8) The rolling hot spot program for salmon bycatch avoidance that operates throughout the entire A season and B season and the agreement to provide notifications of closure areas and any violations of the rolling hot spot program to the third party group.

(9) The restrictions or penalties targeted at vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time.

(10) The requirement for vessels to enter a fishery-wide in-season salmon PSC data sharing agreement.

(11) The requirement for the use of salmon excluder devices, with recognition of contingencies, from January 20 to March 31, and from September 1 until the end of the B season.

(12) The requirement that salmon savings credits are limited to a maximum of three years for IPAs with salmon savings credits.

(13) The restrictions or performance criteria used to ensure that Chinook salmon PSC rates in October are not significantly higher than those achieved in the preceding months.

(F) *Compliance agreement.* The IPA must include a written statement that all parties to the IPA agree to comply with all provisions of the IPA.

(G) *Signatures.* The names and signatures of the owner or representative for each vessel and CDQ group that is a party to the IPA. The representative of an inshore cooperative, or the representative of the entity formed to represent the AFA catcher/processor sector or the AFA mothership sector under paragraph (f)(8) of this section may sign a proposed IPA on behalf of all vessels that are members of that inshore cooperative or sector level entity.

(iv) *Deadline and duration*—(A) *Deadline for proposed IPA*. A proposed IPA must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which the IPA is proposed to be effective.

(B) *Duration*. Once approved, an IPA is effective starting January 1 of the year following the year in which NMFS approves the IPA, unless the IPA is approved between January 1 and January 19, in which case the IPA is effective starting in the year in which it is approved. Once approved, an IPA is effective until December 31 of the first year in which it is effective or until December 31 of the year in which the IPA representative notifies NMFS in writing that the IPA is no longer in effect, whichever is later. An IPA may not expire mid-year. No party may join or leave an IPA once it is approved, except as allowed under paragraph (f)(12)(v)(C) of this section.

(v) *NMFS review of a proposed IPA*—(A) *Approval*. An IPA will be approved by NMFS if it meets the following requirements:

(1) Meets the minimum participation requirements in paragraph (f)(12)(i) of this section;

(2) Is submitted in compliance with the requirements of paragraphs (f)(12)(ii) and (iv) of this section; and

(3) Contains the information required in paragraph (f)(12)(iii) of this section.

(B) *IPA identification number*. If approved, NMFS will assign an IPA identification number to the approved IPA. This number must be used by the IPA representative in amendments to the IPA.

(C) *Amendments to an IPA*. Amendments to an approved IPA may be submitted to NMFS at any time and will be reviewed under the requirements of this paragraph

(f)(12). An amendment to an approved IPA is effective upon written notification of approval by NMFS to the IPA representative.

(D) *Disapproval.* (1) NMFS will disapprove a proposed IPA or a proposed amendment to an IPA for either of the following reasons:

(i) If the proposed IPA fails to meet any of the requirements of paragraphs (f)(12)(i) through (iii) of this section, or

(ii) If a proposed amendment to an IPA would cause the IPA to no longer be consistent with the requirements of paragraphs (f)(12)(i) through (iv) of this section.

(2) *Initial Administrative Determination (IAD).* If, in NMFS' review of the proposed IPA, NMFS identifies deficiencies in the proposed IPA that require disapproval of the proposed IPA, NMFS will notify the applicant in writing. The IPA representative will be provided one 30-day period to address, in writing, the deficiencies identified by NMFS. Additional information or a revised IPA received by NMFS after the expiration of the 30-day period specified by NMFS will not be considered for purposes of the review of the proposed IPA. NMFS will evaluate any additional information submitted by the applicant within the 30-day period. If the Regional Administrator determines that the additional information addresses deficiencies in the proposed IPA, the Regional Administrator will approve the proposed IPA under paragraphs (f)(12)(iv)(B) and (f)(12)(v)(A) of this section. However, if, after consideration of the original proposed IPA and any additional information submitted during the 30-day period, NMFS determines that the proposed IPA does not comply with the requirements of paragraph (f)(12) of this section, NMFS will issue an initial administrative determination (IAD) providing the reasons for disapproving the proposed IPA.

(3) *Administrative Appeals.* An IPA representative who receives an IAD disapproving a proposed IPA may appeal under the procedures set forth at § 679.43. If the IPA representative fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination to approve the proposed IPA, then the IPA will be effective as described in paragraph (f)(12)(iv)(B) of this section.

(4) *Pending appeal.* While appeal of an IAD disapproving a proposed IPA is pending, proposed members of the IPA subject to the IAD that are not currently members of an approved IPA will fish under the opt-out allocation under paragraph (f)(5) of this section. If no other IPA has been approved by NMFS, NMFS will issue all sectors allocations of the 47,591 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(C) of this section, or, in low Chinook salmon abundance years, allocations of the 33,318 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(D) of this section.

(vi) *Public release of an IPA.* NMFS will make all proposed IPAs and all approved IPAs and the list of participants in each approved IPA available to the public on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov/>).

(13) *IPA Annual Report.* The representative of each approved IPA must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(i) *Submission deadline.* The IPA Annual Report must be received by the Council no later than March 15.

(ii) *Information requirements.* The IPA Annual Report must contain the following information:

(A) A comprehensive description of the incentive measures, including the rolling hot spot program and salmon excluder use, in effect in the previous year;

(B) A description of how these incentive measures affected individual vessels;

(C) An evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures, including the effectiveness of —

(1) Measures to ensure that chum salmon were avoided in areas and at times where chum salmon are likely to return to western Alaska;

(2) Restrictions or penalties that target vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels; and

(3) Restrictions or performance criteria used to ensure that Chinook PSC rates in October are not significantly higher than in previous months.

(D) A description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and the reasons that the amendments to the IPA were made.

(E) The sub-allocation to each participating vessel of the number of Chinook salmon PSC and amount of pollock (mt) at the start of each fishing season, and number of Chinook salmon PSC and amount of pollock (mt) caught at the end of each season.

(F) The following information on in-season transfer of Chinook salmon PSC and pollock among AFA cooperatives, entities eligible to receive Chinook salmon PSC allocations, or CDQ groups:

- (1) Date of transfer;
- (2) Name of transferor;
- (3) Name of transferee;
- (4) Number of Chinook salmon PSC transferred; and
- (5) Amount of pollock (mt) transferred.

(G) The following information on in-season transfers among vessels participating in the IPA:

- (1) Date of transfer;
- (2) Name of transferor;
- (3) Name of transferee;
- (4) Number of Chinook salmon PSC transferred; and
- (5) Amount pollock (mt) transferred.

(14) *Non-Chinook salmon prohibited species catch (PSC) limit and Chum Salmon Savings Area.* (i) The PSC limit for non-Chinook salmon caught by vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area, as defined under § 679.22(a)(5) and in Figure 2 to this part, is 42,000 fish.

(ii) 10.7 percent of the non-Chinook PSC limit is allocated to the CDQ Program as a PSQ reserve.

(iii) If the Regional Administrator determines that 42,000 non-Chinook salmon have been caught by vessels using trawl gear during the period August 15 through October 14 in the Catcher Vessel Operational Area, NMFS will prohibit fishing for pollock for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9 to this part.

(iv) Trawl vessels participating in directed fishing for pollock and operating under an IPA approved by NMFS under paragraph (f)(12) of this section are exempt from closures in the Chum Salmon Savings Area.

(15) *Salmon handling*. Regulations in this paragraph apply to vessels directed fishing for pollock in the BS, including pollock CDQ, and processors taking deliveries from these vessels.

(i) *Salmon discard*. The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD Program at § 679.26 if the salmon were taken incidental to a directed fishery for pollock in the BS until the number of salmon has been determined by the observer and the observer's collection of any scientific data or biological samples from the salmon has been completed.

(ii) *Salmon retention and storage*. (A) Operators of catcher/processors or motherships must —

(1) Sort and transport all salmon bycatch from each haul to an approved storage container located adjacent to the observer sampling station that allows an observer free and unobstructed access to the salmon (see § 679.28(d)(2)(i) and (d)(7)). The salmon storage container must remain in view of the observer from the observer sampling station at all times during the sorting of the haul.

(2) If, at any point during sorting of a haul or delivery, the salmon are too numerous to be contained in the salmon storage container, cease all sorting and give the observer the opportunity to count the salmon in the storage container and collect scientific data or biological samples. Once the observer has completed all counting and

sampling duties for the counted salmon, the salmon must be removed by vessel personnel from the approved storage container and the observer sampling station, in the presence of the observer.

(3) Before sorting of the next haul may begin, give the observer the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous haul. When the observer has completed all counting and sampling duties for a haul or delivery, vessel personnel must remove the salmon, in the presence of the observer, from the salmon storage container and the observer sampling station.

(4) Ensure no salmon of any species pass the observer sample collection point, as identified in the scale drawing of the observer sample station (see § 679.28(d)(2)(i) and (d)(7)).

(B) Operators of vessels delivering to shoreside processors or stationary floating processors must —

(1) Retain all salmon taken incidental to a directed fishery for pollock in the BS until the salmon are delivered to the processor receiving the vessel's BS pollock catch.

(2) Notify the observer at least 15 minutes before handling catch on board the vessel, including, but not limited to, moving catch from one location to another, sorting, or discard of catch prior to the delivery of catch to the processor receiving the vessel's BS pollock catch. This notification requirement is in addition to the notification requirements in § 679.51(e).

(3) Secure all salmon and catch after the observer has completed the collection of scientific data and biological samples and after the vessel crew has completed handling the catch. All salmon and any other catch retained on board the vessel must be made

unavailable for sorting and discard until the delivery of catch to the processor receiving the vessel's BS pollock catch. Methods to make salmon or retained catch unavailable for sorting or discard include but are not limited to securing the catch in a completely enclosed container above or below deck, securing the catch in an enclosed codend, or completely and securely covering the fish on deck.

(4) Comply with the requirements in paragraphs (f)(15)(ii)(B)(2) and (3) of this section, before handling the catch prior to delivery.

(C) Shoreside processors or stationary floating processors must —

(1) Comply with the requirements in § 679.28(g)(7)(vii) for the receipt, sorting, and storage of salmon from deliveries of catch from the BS pollock fishery.

(2) Ensure no salmon of any species pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the plant in the Catch Monitoring Control Plan (CMCP).

(3) Sort and transport all salmon of any species to the salmon storage container identified in the CMCP (see § 679.28(g)(7)(vi)(C) and (g)(7)(x)(F)). The salmon must remain in that salmon storage container and within the view of the observer at all times during the offload.

(4) If, at any point during the offload, salmon are too numerous to be contained in the salmon storage container, cease the offload and all sorting and give the observer the opportunity to count the salmon and collect scientific data or biological samples. The counted salmon then must be removed from the area by plant personnel in the presence of the observer.

(5) At the completion of the offload, give the observer the opportunity to count the salmon and collect scientific data or biological samples.

(6) Before sorting of the next offload of catch from the BS pollock fishery may begin, give the observer the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous offload of catch from the BS pollock fishery. When the observer has completed all counting and sampling duties for the offload, plant personnel must remove the salmon, in the presence of the observer, from the salmon storage container and location where salmon are counted and biological samples or scientific data are collected.

(iii) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors and SFPs that are required to retain salmon under paragraph (f)(15)(i) of this section must designate and identify to the observer aboard the vessel, or at the shoreside processor or SFP, a crew person or employee responsible for ensuring all sorting, retention, and storage of salmon occurs according to the requirements of (f)(15)(ii) of this section.

(iv) *Discard of salmon.* Except for salmon under the PSD Program at § 679.26, all salmon must be returned to the sea as soon as is practicable, following notification by an observer that the number of salmon has been determined and the collection of scientific data or biological samples has been completed.

(g) *Chinook salmon bycatch management in the AI pollock fishery—(1) Applicability.* This paragraph contains regulations governing the bycatch of Chinook salmon in the AI pollock fishery.

(2) *AI Chinook salmon PSC limit.* (i) The PSC limit for Chinook salmon caught by vessels while harvesting pollock in the AI is 700 fish.

(ii) 7.5 percent of the PSC limit is allocated to the CDQ Program as a PSQ reserve.

(3) *Area closures.* If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon by vessels using trawl gear while directed fishing for pollock in the AI will reach the PSC limit, NMFS, by notification in the **Federal Register**, will close the AI Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear on the following dates:

(i) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained before April 15.

(ii) From September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained after April 15.

* * * * *

6. In § 679.22, revise paragraph (a)(10) to read as follows:

§ 679.22 Closures.

(a) * * *

(10) *Chum Salmon Savings Area.* Directed fishing for pollock by vessels using trawl gear is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also § 679.21(f)(14)). Vessels directed fishing for pollock in the BS, including pollock CDQ, and operating under an approved IPA under § 679.21(f)(12) are exempt from closures in the Chum Salmon Savings Area.

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7. In § 679.28, revise paragraphs (d)(7)(i), (ii), and (iii) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(7) * * *

(i) A salmon storage container must be located adjacent to the observer sampling station;

(ii) The salmon storage container must remain in view of the observer at the observer sampling station at all times during the sorting of each haul; and

(iii) The salmon storage container must be at least 1.5 cubic meters.

* * * * *

8. In § 679.51, revise paragraphs (e)(1)(iii), (e)(2) introductory text, and (e)(2)(iii)(B)(3) to read as follows:

§ 679.51 Observer requirements for vessels and plants.

* * * * *

(e) * * *

(1) * * *

(iii) *Communications and observer data entry—(A) Observer use of equipment.*

Allow an observer to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the observer or the United States.

(B) The operator of a catcher/processor, mothership, or catcher vessel 125 ft LOA or longer (except for a catcher vessel fishing for groundfish with pot gear) must provide the following equipment, software and data transmission capabilities:

(1) *Observer access to computer.* Make a computer available for use by the observer.

(2) *NMFS-supplied software.* Ensure that the most recent release of NMFS data entry software provided by the Regional Administrator or other approved software is installed on the computer described in paragraph (e)(1)(iii)(B)(1) of this section.

(3) *Data transmission.* The computer and software described in paragraphs (e)(1)(iii)(B)(1) and (2) of this section must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(4) *Functional and operational equipment.* Ensure that the required equipment described in paragraph (e)(1)(iii)(B) of this section and that is used by an observer to enter or transmit data is fully functional and operational. “Functional” means that all the tasks and components of the NMFS-supplied, or other approved, software described in paragraph (e)(1)(iii)(B)(2) of this section and any required data transmissions to NMFS can be executed effectively aboard the vessel by the equipment.

(C) The operator of a catcher vessel participating in the Rockfish Program or a catcher vessel less than 125 ft LOA directed fishing for pollock in the BS must comply with the computer and software requirements described in paragraphs (e)(1)(iii)(B)(1), (2), and (4) of this section.

* * * * *

(2) *Shoreside processor and stationary floating processor responsibilities.* A manager of a shoreside processor or a stationary floating processor that is required to maintain observer coverage as specified under paragraph (b) of this section must:

* * * * *

(iii) * * *

(B) * * *

(3) *Functional and operational equipment.* Ensuring that the communications equipment required under paragraph (e)(2)(iii)(B) of this section that is used by observers to enter and transmit data is functional and operational. “Functional” means that all the tasks and components of the NMFS-supplied, or other approved, software described at paragraph (e)(2)(iii)(B)(2) of this section and any data transmissions to NMFS can be executed effectively by the communications equipment.

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Tables 47a through 47d to Part 679 [Removed]

9. Remove Tables 47a through 47d to part 679.

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